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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

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CHRISTINE MCKENNON,

*Petitioner,*

v.

NASHVILLE BANNER PUBLISHING CO.,

*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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**JOINT APPENDIX**

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## TABLE OF CONTENTS

Item:	Page:
1. Docket Entries .....	1a
2. Complaint .....	5a
3. Answer .....	12a
4. Defendant's Motion for Summary Judgment ..	17a
5. Defendant's Statement of Undisputed Facts in support of Defendant's Motion for Summary Judgment And Exhibits .....	18a
6. Defendant's Notice of Filing Original Affidavits	34a
Affidavit of Irby C. Simpkins, Jr. ....	35a
Affidavit of Edward F. Jones .....	39a
Affidavit of Imogene L. Stoneking ....	41a
Affidavit of Elise D. McMillan .....	42a
7. Plaintiff's Statement of Disputed Material Facts	44a
Affidavit of Gene McKennon .....	46a
Affidavit of Christine McKennon .....	48a
8. Plaintiff's Notice of Filing Documents .....	54a
Excerpts from Deposition of Irby C. Simpkins, Jr. ....	55a
Excerpts from Deposition of Elise David McMillan .....	72a
Excerpts from Deposition of Imogene Stoneking .....	82a
9. Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment ..	85a
10. Defendant's Motion to Suppress Revisions of Plaintiff's Deposition .....	93a

Item:

Page:

1a

11. Defendant's Memorandum of Law in Support of Motion to Suppress Revisions of Plaintiff's Deposition (Excerpts) ..... 94a
12. Exhibits to Defendant's Motion to Suppress Revisions of Plaintiff's Deposition ..... 102a
13. Excerpts from Deposition of Christine McKennon ..... 117a
14. Decision of the United States District Court for the Middle District of Tennessee, June 3, 1992, is set out in the Appendix to the Petition for a Writ of Certiorari at pp. 10a-18a
15. Decision of the United States Court of Appeals for the Sixth Circuit, November 15, 1993, is set out in the Appendix to the Petition for a Writ of Certiorari at pp. 1a-9a

RELEVANT DOCKET ENTRIES

5/6/91	1	COMPLAINT (Summons(es) issued) Filing fee paid in the amount of : \$120 Receipt # 32286 (ks) [Entry date 09/11/91]
6/17/91	2	ANSWER by defendant Nashville Banner to [1-1] (ks) [Entry date 09/11/91]
1/7/92	7	MOTION by defendant for summary judgment (ks) [Entry date 01/08/92]
1/7/92	9	STATEMENT of facts by defendant in support of motion for summary judgment [7-1] (ks) [Entry date 01/08/92]
3/10/92	20	NOTICE by defendant of filing original affidavits of Elise D. McMillan, Irby C. Simpkins, Jr., Edward F. Jones and Imogene L. Stoneking in support of defendant's motion for summary judgment. (ks)
3/10/92	21	AFFIDAVIT of Irby C. Simpkins, Jr. in support of defendant's motion for summary judgment [7-1] (ks)
3/10/92	22	AFFIDAVIT of Edward F. Jones in support of defendant's motion for summary judgment [7-1] (ks)
3/10/92	23	AFFIDAVIT of Elise D. McMillan in support of defendant's motion for summary judgment [7-1] (ks)



- 3/10/92 24 AFFIDAVIT of Imogene L. Stoneking in support of defendant's motion for summary judgment [7-1] (ks)
- 3/16/92 25 RESPONSE by plaintiff to defendant's motion for summary judgment [7-1] with Exhibit A attached. (ks) [Entry date 03/17/92]
- 3/16/92 27 AFFIDAVIT of Gene McKennon in support of plaintiff's response [25-1] to defendant's motion for summary judgment (ks) [Entry date 03/17/92]
- 3/16/92 28 AFFIDAVIT of Christine McKennon in support of plaintiff's response [25-1] to defendant's motion for summary judgment. (ks) [Entry date 03/17/92]
- 3/20/92 29 REPLY by defendant Nashville Banner to plaintiff's response to motion for summary judgment [7-1] with Exhibits A-G attached. (ks) [Entry date 03/23/92]
- 4/8/92 32 MOTION by defendant to suppress revisions of plaintiff's deposition with Exhibits A-D attached. (ks)
- 4/8/92 33 DECLARATION by Teri Campbell in support of defendant's motion to suppress [32-1]. Declaration is Exhibit C to motion. (ks)
- 4/8/92 34 MEMORANDUM by defendant Nashville Banner in support of motion to suppress revisions of plaintiff's deposition [32-1].(ih)

- 4/10/92 38 NOTICE by defendant of filing original deposition and copies of excerpts of depositions. (ks) [Entry date 04/12/92]
- 4/14/92 42 NOTICE by plaintiff of filing documents to supplement response to defendant's motion for summary judgment with documents attached. (This pleading was submitted under seal, no order has been entered allowing filing under seal.) (ks) [Entry date 04/20/92]
- 4/17/92 43 SECOND SUPPLEMENTAL AUTHORITY by defendant in support of motion for summary judgment [7-1] with attachment. (ks) [Entry date 04/20/92]
- 4/21/92 44 RESPONSE by plaintiff to defendant's motion to suppress revisions of plaintiff's deposition [32-1] with Exhibits 1 and 2 attached. (ks) [Entry date 04/22/92]
- 4/27/92 45 REPLY by defendant to plaintiff's response to motion to suppress revisions of plaintiff's deposition [32-1]. (ks) [Entry date 04/28/92]
- 6/3/92 47 ORDER by Judge Thomas A. Higgins: In accordance with memorandum, defendant's motion for summary judgment [7-1] is granted. Dismissing case with prejudice. The entry of this order shall constitute the judgment in this action. (cc: all counsel) (ks) [Entry date 06/04/92]



6/26/92 48

NOTICE OF APPEAL by plaintiff  
Christine McKennon from Dist. Court  
decision, [47-2] (mg) [Entry date  
07/01/92]

7/29/92 57

ORDER by Judge Thomas A. Higgins  
denying motion for sanctions and fees  
[49-1] (cc: all counsel) (mg)

No. 3-91-0346  
Filed May 06, 1991

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

CHRISTINE MCKENNON,

Plaintiff, JURY DEMAND  
JUDGE HIGGINS

vs.

THE NASHVILLE BANNER PUBLISHING CO.,  
INC.

Defendant.

COMPLAINT

Pursuant to the Federal Rules of Civil Procedure, and other applicable law, plaintiff Christine McKennon hereby sues defendant Nashville Banner Publishing Co., Inc. and in support thereof would show the Court the following:

1. Plaintiff CHRISTINE MCKENNON (hereinafter "Ms. McKennon") is an adult citizen of Tennessee residing at 321 Harbour Drive, Wilson County, Tennessee 37138. Ms. McKennon's address for the purpose of this lawsuit shall be her counsel's address.

2. Defendant NASHVILLE BANNER PUBLISHING CO., INC., (hereinafter "Banner") is a for profit Tennessee corporation, engaged in the business of publishing a newspaper in Middle Tennessee, known as the Nashville Banner. The stock of the Banner is owned 100% by Brownlee O. Currey and Irby C. Simpkins, two (2) adult

citizens residing in Middle Tennessee. Brownlee O. Currey holds, and held during the relevant time, the position of Chairman of the Board of the Nashville Banner Publishing Co., Inc. Irby C. Simpkins holds, and held during the relevant time, the office of President of the Nashville Banner Publishing Co., Inc. The Banner's agent for service of process is Claudia R. Allison, 1100 Broadway, Nashville, TN 37203.

3. The cause of action is age discrimination. This suit is brought pursuant to the provisions of and in accordance with the Age Discrimination in Employment Act (ADEA) 29 U.S.C. 621, *et seq.* and the Tennessee Human Rights Act (THRA T.C.A. 4-21-101, *et seq.*

4. The Banner is an employer for the purposes of the ADEA and THRA. The Banner employs more than 30 persons. The discriminatory acts herein described occurred on or about October 31, 1990 and plaintiff filed a written charge with the Equal Employment Opportunity Commission (hereinafter "EEOC") within 180 days of the alleged discriminatory acts. The charge was filed with the EEOC on or about December 6, 1990, as required by the ADEA. This suit is filed more than 60 days after the filing of the charge.

5. This Court has jurisdiction to determine claims of age discrimination pursuant to both the ADEA and THRA. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367, and other appropriate provisions and principles of law. The discriminatory acts complained of occurred in Davidson County, Tennessee. Venue is proper.

6. Christine McKennon was born on December 31, 1927 and at the time of the discriminatory acts alleged herein was 62 years old.

7. Ms. McKennon was employed by the Banner on or about May 14, 1951 and assigned the job title Ad

Taker. On or about June 22, 1952, Ms. McKennon assumed the job title Secretary, and continued to work as a secretary at the Banner until she was terminated on October 31, 1990. During her 39 years at the Banner, Ms. McKennon worked as secretary to six (6) different individuals, and as secretary to the national advertising manager, and as secretary to the classified advertising staff. In each of these positions Ms. McKennon was evaluated and her performance was consistently rated as excellent.

8. From February 26, 1982 until March 6, 1989, Ms. McKennon held the position of secretary to Jack Gunter, Executive Vice President. In 1989 Gunter's job assignment changed and Ms. McKennon was reassigned as secretary to Imogene Stoneking, Comptroller. Ms. McKennon held this position from March 6, 1989 until her termination on October 31, 1990. In this position Ms. McKennon's duties included maintaining personnel files, working on preparation of the annual budget, maintaining petty cash vouchers for expense reimbursements, processing time sheets, making travel arrangements, directing the personnel department regarding employee changes, and other duties including miscellaneous tasks assigned directly by Imogene Stoneking.

9. After Ms. McKennon's reassignment as secretary to the Comptroller, she began to experience a pattern of conduct designed and intended to force her resignation and/or retirement. The Banner's agents began a conscious and willful effort to force her retirement and/or resignation by reducing Ms. McKennon's job benefits and privileges and intentionally and willfully modifying her working conditions. For example, certain Banner agents, between April 1989 and October 1990, acting together, eliminated Ms. McKennon's parking privileges, modified her vacation privileges, changed her lunch hour privileges, altered her compensatory time privileges, threatened to require weekend work, and denied an appropriate pay raise. These acts and others were willful and intentional



misconduct undertaken to force Ms. McKennon's retirement. Plaintiff alleges that defendant's harassment and discrimination were predicated upon plaintiff's age and defendant's intention to force her retirement. These were discriminatory acts taken against Ms. McKennon in contravention of the ADEA and THRA.

10. For more than one (1) year Ms. McKennon's immediate supervisor, Imogene Stoneking, acting on behalf of Irby Simpkins, publisher, and Brownlee O. Currey, chairman of the board, sought Ms. McKennon's retirement. Ms. Stoneking began to suggest retirement to Ms. McKennon, and when this strategy failed, began to implement the discriminatory practices described above to force resignation and/or retirement.

11. On or about October 31, 1990 Ms. McKennon was summoned to a meeting at the office of Imogene Stoneking without prior warning. Present were Elise McMillan, general counsel of the Banner, Tony Kessler, managing editor, and Ms. Stoneking. Without any notice or warning, Ms. McKennon was told she was being immediately terminated. The only explanation offered to Ms. McKennon was "staff reduction". Ms. McKennon was presented with a 5 page "release agreement", which had been prepared by counsel for the Banner. Ms. McKennon was told to review the release agreement and sign it in order to receive any severance pay. Ms. McKennon was told that if she did not sign the release agreement, she would receive no severance pay.

12. Ms. McKennon was invited to immediately attend another meeting held by publisher Irby Simpkins. That meeting lasted about 20 minutes, and then plaintiff was directed to return to her desk, clean out her work area, and exit the building. Specifically, Ms. McKennon was approached by her supervisor, Imogene Stoneking, and told "don't shred anything" and "I can't leave until you leave". Ms. Stoneking then monitored Ms. McKennon's departure,

ushered her to the door, demanded her Banner ID card, and after 39 years of service, Christine McKennon was directed to leave the Banner's property.

13. The day after Ms McKennon was terminated the Banner caused to be published in the Middle Tennessee area an announcement that Ms. McKennon had sought early retirement. This publication by the Banner was false, and the persons who caused the publication knew or should have known the information contained therein was false. This false publication was part of the Banner's strategy to illegally terminate the employment of Christine McKennon.

14. At the time of Christine McKennon's termination, the Banner employed at least six (6) other secretaries. The two oldest secretaries, including the plaintiff, were terminated. Of the remaining five secretaries, none had more than twelve (12) years of service with the Banner. Two (2) of the remaining secretaries were less than 40 years old. The two (2) youngest secretaries both had less than six (6) months' experience with the Banner. None of the five (5) secretaries, who remained after Christine McKennon's termination, possessed any qualifications superior to the qualifications of Ms. McKennon. None of the secretaries, who remained after Christine McKennon's termination, performed duties which Ms. McKennon was unable to perform. At the time Ms. McKennon was terminated, she was older than, more qualified than, and more experienced than any of the five (5) secretaries who remained.

15. The termination of Christine McKennon's employment was an illegal discriminatory act and/or practice. The pattern of conduct, referenced above, which preceded Ms. McKennon's termination were illegal and discriminatory acts and/or practices. The termination of Ms. McKennon was an illegal and discriminatory act. These acts and practices violate both the ADEA and the THRA, in that these discriminatory and illegal acts were based upon the age



of plaintiff. The Banner's decision to terminate Ms. McKennon and the Banner's strategy to implement this decision were based upon her age.

16. At the time of her termination, Ms. McKennon's annual salary was approximately \$26,437. Ms. McKennon has suffered the loss of this income and certain employment benefits, including medical insurance, as a direct and proximate result of defendant's illegal acts.

17. Defendant's illegal and discriminatory acts were planned, calculated, counseled, intentional, and wilful. Defendant has willfully violated the ADEA and THRA, and Ms. McKennon's federal and state statutory rights. Ms. McKennon is entitled to liquidated damages, or an award doubling the compensation and/or actual damages.

18. Ms. McKennon was terminated after 39 years of service on her 36th wedding anniversary with no notice. Ms. McKennon was summarily and abrasively treated by Banner's agents, insulted, and ushered rudely from the premises, after being directed to gather her belongings and leave. The Banner then falsely and knowingly caused her termination to be published as an "early retirement". Since her termination, Ms. McKennon has continued to suffer embarrassment and humiliation as a direct result of defendant's illegal and discriminatory acts. Ms. McKennon was embarrassed and humiliated by defendant's acts, and is entitled to damages for these injuries.

**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF PRAYS:**

1. That this complaint be filed and served upon defendant and that answer be required within the time allowed by law;
2. For trial by jury;
3. For judgment against defendant awarding compensatory damages, actual damages, and appropriate

equitable relief including back pay and prospective (front) pay;

4. For a judgment against defendant awarding liquidated damages for defendant's willful violation;

5. For a judgment against defendant awarding damages for the humiliation and embarrassment caused by the discriminatory practices;

6. For an order directing defendant to pay all costs of this litigation, and plaintiff's reasonable attorney fees;

7. For interest on all amounts due calculated from the date this action is filed;

8. For any other appropriate relief.

**RESPECTFULLY SUBMITTED**

## [Caption Omitted]

ANSWER TO COMPLAINT AND AFFIRMATIVE  
DEFENSES OF THE  
NASHVILLE BANNER PUBLISHING CO.

---

Defendant, The Nashville Banner Publishing Co. (hereinafter referred to as the "*Nashville Banner*"), answers Plaintiff's Complaint as follows:

*Answer*

1. The *Nashville Banner* denies knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 1 of the Complaint.

2. The *Nashville Banner* admits the averments contained in Paragraph 2 of the Complaint, except avers that the proper name of Defendant is Nashville Banner Publishing Co., and that the proper names of Mr. Currey and Mr. Simpkins are Brownlee O. Currey, Jr., and Irby C. Simpkins, Jr.

3. The *Nashville Banner* denies each and every averment contained in Paragraph 3 of the Complaint, except admits Plaintiff purports to bring an action under the Age Discrimination in Employment Act and the Tennessee Human Rights Act.

4. The *Nashville Banner* denies knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 4 of the Complaint, except admits that it employs more than 30 persons and that Plaintiff filed a discrimination charge with the Equal Employment Opportunity Commission dated December 6, 1990.

5. The *Nashville Banner* denies knowledge or information sufficient to form a belief as to the truth of the

averments contained in Paragraph 5 of the Complaint, except admits that Plaintiff purports to invoke the jurisdiction and venue of this Court.

6. The *Nashville Banner* denies knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 6 of the Complaint.

7. The *Nashville Banner* denies each and every averment contained in Paragraph 7 of the Complaint, except admits that Plaintiff was terminated on October 31, 1990.

8. The *Nashville Banner* denies each and every averment contained in Paragraph 8 of the Complaint, except admits that Plaintiff was secretary to Jack Gunter from 1982 to 1989, that Plaintiff was secretary to Imogene Stoneking from 1989 to 1990, and that Plaintiff performed customary secretarial duties while employed at the *Nashville Banner*.

9. The *Nashville Banner* denies each and every averment contained in Paragraph 9 of the Complaint.

10. The *Nashville Banner* denies each and every averment contained in Paragraph 10 of the Complaint.

11. The *Nashville Banner* denies each and every averment contained in Paragraph 11 of the Complaint, except admits that Ms. Stoneking, Mr. Kessler and Ms. McMillan met with Plaintiff on or about October 31, 1990, in the office of Ms. Stoneking to explain to Plaintiff that she was being terminated as part of a reduction in staff and to give her a severance check. As was the case with all individuals terminated as part of this reduction in staff, Plaintiff was offered additional severance as part of a release agreement that had been prepared by counsel for the *Nashville Banner*.

12. The *Nashville Banner* denies each and every averment contained in paragraph 12 of the Complaint, except admits that Plaintiff attended a staff meeting at which publisher Irby Simpkins spoke. The *Nashville Banner* further



admits that Plaintiff was asked to return her Banner ID card, that Plaintiff was asked by Ms. Stoneking to stop shredding documents when Ms Stoneking observed Plaintiff shredding documents, and that Plaintiff was advised by Ms. Stoneking that Ms. Stoneking could not leave until Plaintiff left.

13. The *Nashville Banner* denies each and every averment contained in Paragraph 13 of the Complaint.

14. The *Nashville Banner* denies each and every averment contained in Paragraph 14 of the Complaint, except admits that as part of a reduction in staff two secretaries who were older than the other secretaries were terminated and that two of the remaining secretaries were less than 40 years old and had been employed at the *Nashville Banner* for less than six months.

15. The *Nashville Banner* denies each and every averment contained in Paragraph 15 of the Complaint.

16. The *Nashville Banner* denies each and every averment contained in Paragraph 16 of the Complaint, except admits that Plaintiff's annual salary was approximately \$26,437 at the time of her termination.

17. The *Nashville Banner* denies each and every averment contained in Paragraph 17 of the Complaint.

18. The *Nashville Banner* denies each and every averment contained in paragraph 18 of the Complaint.

19. All averments to which no specific response has been made herein are denied.

20. The *Nashville Banner* denies that Plaintiff is entitled to any relief prayed for in the Complaint.

#### *Affirmative Defenses*

##### *First Affirmative Defense*

21. Plaintiff's Complaint fails to state a claim

upon which relief may be granted.

##### *Second Affirmative Defense*

22. Plaintiff was discharged for legitimate, non-discriminatory business reasons.

##### *Third Affirmative Defense*

23. Plaintiff was an employee-at-will and could be terminated at any time without cause by the *Nashville Banner*.

##### *Fourth Affirmative Defense*

24. Any damage with respect to which any claim is asserted against Defendant results from acts, omissions, or events other than any alleged acts or omissions of the *Nashville Banner* contained in the Complaint.

##### *Fifth Affirmative Defense*

25. Plaintiff has failed to take reasonable steps to minimize and mitigate any alleged damages which she could have avoided.

##### *Sixth Affirmative Defense*

26. Plaintiff is estopped by her own acts, conduct, or omissions from asserting some or all of the claims contained in the Complaint.

##### *Seventh Affirmative Defense*

27. Plaintiff has failed to exhaust available and requisite administrative remedies.

##### *Eighth Affirmative Defense*

28. Plaintiff was terminated on the basis of reasonable factors other than age.

##### *Ninth Affirmative Defense*

29. The Complaint fails to state a claim or cause



of action against the *Nashville Banner* for an award of liquidated or statutory damages.

WHEREFORE, the *Nashville Banner* demands judgment dismissing the Complaint against it together with an award of its costs and disbursements, including an award of attorneys' fees and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

[Caption Omitted]

***DEFENDANT'S MOTION FOR SUMMARY JUDGMENT***

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant, The Nashville Banner Publishing Co., by and through its attorneys, moves this Court for the entry of an order granting Defendant summary judgment. As grounds for this Motion, Defendant states that there are no genuine issues of material fact necessary to render a decision on Plaintiff's age discrimination claims in this cause and that it is entitled to judgment as a matter of law.

In support of this Motion for Summary Judgment, Defendant has simultaneously filed herewith a Statement of Undisputed Facts, a Memorandum of Law more fully articulating the reasons upon which this Motion should be granted, as well as other supporting evidentiary materials.

WHEREFORE, Defendant respectfully requests that the Court grant its Motion for Summary Judgment and dismiss this case.

Respectfully submitted,

## [Caption Omitted]

STATEMENT OF UNDISPUTED MATERIAL  
FACTS IN SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

---

Pursuant to Local Rule 8(b) 7(b) Defendant, The Nashville Banner Publishing Co. ("The Company"), hereby submits the following statement of undisputed material facts that entitle it to judgment as a matter of law.<sup>1</sup>

2. The Company is engaged in the business of publishing a daily newspaper known as the *Nashville Banner*. (Complaint, ¶ 2; Answer, ¶ 2).

3. Brownlee O. Currey, Jr. is the Chairman of the Board of the Company. Irby C. Simpkins, Jr. is President of the Company and Publisher of the *Nashville Banner*. (Complaint, 2; Appendix J, ¶ 1). Imogene L. Stoneking is the Company's Comptroller. (Appendix L, ¶ 1; Complaint, ¶ 8). Elise D. McMillan is the Company's General Counsel and Executive Vice President for Administration. (Appendix M, ¶ 1). Edward F. Jones is the Editor of the *Nashville Banner*. (Appendix K, ¶ 1).

4. Plaintiff was employed as secretary to Ms. Stoneking from March, 1989 until October 21, 1990. (Complaint, ¶ 8; Answer, ¶ 8; Appendix 1, ¶ 2). Plaintiff was an employee-at-will. (Appendix A). She was separated from employment on October 31, 1990. (Complaint, ¶ 11, Answer, ¶ 1). On May 6, 1991, Plaintiff instituted the

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<sup>1</sup> For purposes of this Statement of Undisputed Material Facts, the Company will accept as true a number of Plaintiff's factual assertions because even if they were true, the Company would still be entitled to summary judgment. the Company does not waive the right to present additional or contradictory evidence at trial.

present action. (Complaint).

5. Plaintiff's duties as secretary to the Comptroller included maintaining personnel files, assisting in the preparation of the Company's annual budget, processing time sheets, and various other tasks assigned to her by Ms. Stoneking. (Complaint, ¶ 8).

6. In her position as the Comptroller's secretary, Plaintiff had access to proprietary and confidential documents and information, such as payroll data, financial information, personnel files and other confidential records. (Appendix 1, ¶ 2). Plaintiff understood that this information was confidential and proprietary business information. (Appendix B, p. 136). She was aware that this information was to be kept confidential and was not to be disclosed outside the workplace or to individuals within the Company who were not authorized to have the information. (Appendix B, p. 136). Plaintiff further understood that a failure to keep these documents and records confidential consistent with her position and obligations could have resulted in her termination. (Appendix B, p. 137). Plaintiff knew that the Company was relying upon her not to disclose the confidential information to which she had access. (Appendix B, pp. 137, 142).

7. Through interrogatories and document requests, the Company discovered that Plaintiff apparently had in her possession copies of confidential and proprietary documents belonging to the Company. During Plaintiff's deposition on December 18, 1991, the Company for the first time learned that while employed Plaintiff had copied and removed from its premises those confidential documents. (Appendix J, ¶ 4). Plaintiff did not tell anyone at the Company that she had taken those confidential materials until her deposition. (Appendix C, pp. 196-99).

8. Plaintiff revealed in her deposition that in the fall of 1989, she photocopied and removed from the

Company's premises the Nashville Banner Fiscal Payroll Ledger. (Appendix C, 196-200; Appendix D). Plaintiff obtained this document in her role as the Comptroller's confidential secretary. (Appendix C, p. 197). She understood that it was a highly confidential document. (Appendix C, p. 197). Plaintiff did not tell the Comptroller or anyone else that she had copied this document or that she was removing it from the Company's premises. (Appendix C, p. 197). Plaintiff copied the document and removed it from the premises knowing that she was not authorized to do so. (Appendix C, p. 199-200). She did this after being specifically instructed by the Comptroller to shred the document. (Appendix C, pp. 198-99). A redacted copy of this document is attached as Appendix D.

9. Plaintiff also copied and removed from the Company's premises the Nashville Banner Publishing Co.'s Profit and Loss Statement in the fall of 1989. (Appendix E, pp. 200-02; Appendix F). This document was also highly confidential and obtained by Plaintiff in her role as the Comptroller's confidential secretary. (Appendix E, p. 201). Plaintiff was given this document by the Comptroller to shred but made a copy of it instead. (Appendix E, p. 202). Once again, Plaintiff did not tell anyone at the Company that she had copied this document or that she had removed it from the premises. (Appendix E, p. 202). Plaintiff understood that she was not authorized to copy the Profit and Loss Statement or to remove it from the Company's premises. (Appendix E, p. 202). A redacted copy of this document is attached as Appendix F.

10. In the summer of 1989, Plaintiff copied and removed from the Company's premises a series of documents and an agreement relating to a Company manager. (Appendix G, pp. 203-05; Collective Appendix H). Plaintiff had removed these documents from the manager's personnel file. (Appendix G, pp. 203-05). She did not tell anyone at the Company that she had copied the documents. (Appendix G, p. 204). After copying the documents, she

removed them from the Company's premises, and revealed their contents to other persons. (Appendix G, pp. 204-05). Once again, Plaintiff understood she was not authorized to copy these documents or to remove them from the Company's premises. (Appendix G, p. 205). She further understood that these were also highly confidential documents. (Appendix G, pp. 214-215). Redacted copies of these documents are attached as collective Appendix H.

11. Plaintiff was informed by letter dated December 20, 1991, that her actions constituted deliberate misconduct involving breach of trust and confidentiality obligations essential to her position as a confidential secretary. (Appendix I).

12. Had the Company been aware of Plaintiff's breach of confidentiality and misconduct at the time it occurred or at any time thereafter, it would have terminated her immediately. (Appendix I, J, K, L).

Respectfully submitted,



**EXHIBITS TO DEFENDANT'S UNDISPUTED  
FACTS IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

[Note: information redacted pursuant to district court's privacy order is indicated by brackets "{ }"]

## ACKNOWLEDGMENT OF RECEIPT OF NASHVILLE BANNER EMPLOYEE HANDBOOK

I acknowledge receipt of the Nashville Banner Employee Handbook and I have read and understand its contents. I understand that the policies and guidelines set forth in this handbook should not be construed as express or implied contractual guarantees regarding my employment relationship with the Nashville Banner.

I understand and agree that my employment relationship will continue to be an employment at the continuing will of both parties for no definite duration and that either party remains free to terminate the relationship at any time.

s/ Chris McKennon  
Signature of Employee

Feb. 28, 1990  
Date

1/1/90

NASHVILLE BANNER  
FISCAL PERIOD PAYROLL LEDGER

AS-OF DATE : 09/30/89  
PERIOD ENDING : 09/30/89

EMP NO.	EMPLOYEE NAME	FOLIO	G/L ACCT	CUR FISCAL
------------	---------------	-------	-------------	---------------

101 CURREY,BROWNLEE O. JR. {All pay  
CHECK # 1660 CD1 information redacted}  
CHECK # 1660 CD1  
CHECK # 1675 CD1

EMPLOYEE SUMMARY  
WAGES SALARIES  
ACCRUED FICA  
ACCRUED FED W/H  
NET PAY

102      SIMPKINS, IRBY C. JR.  
CHECK # 1661 CD1  
CHECK # 1661 CD1  
CHECK # 1676 CD1  
CHECK # 1676 CD1

EMPLOYEE SUMMARY  
WAGES SALARIES  
ACCRUED FICA  
ACCRUED FED W/H  
NET PAY

104 ELLSWORTH, BETTY MCPEAK  
CHECK # 1662 CD1  
CHECK # 1662 CD1  
CHECK # 1662 CD1  
CHECK # 1662 CD1  
CHECK # 1662 CD1

24a

CHECK # 1662 CD1  
CHECK # 1677 CD1  
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EMPLOYEE SUMMARY  
WAGES SALARIES  
ACCRUED FICA  
ACCRUED FED W/H  
ACCRUED CREDIT UNION  
ACCRUED PROFIT SHARE  
ACCRUED UNITED WAY  
ACC PARKING - TENN  
NET PAY

105 ALLISON, CLAUDIA  
CHECK # 1663 CD1  
CHECK # 1663 CD1  
CHECK # 1663 CD1  
CHECK # 1663 CD1  
CHECK # 1663 CD1  
CHECK # 1663 CD1  
CHECK # 1678 CD1  
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EMPLOYEE SUMMARY  
WAGES SALARIES  
ACCRUED FICA  
ACCRUED FED W/H  
ACCRUED CREDIT UNION  
ACCRUED PROFIT SHARE

25a

ACCRUED UNITED WAY  
ACC PARKING - TENN  
NET PAY

106 STONEKING, IMOGENE  
CHECK # 1664 CD1  
CHECK # 1664 CD1  
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EMPLOYEE SUMMARY  
WAGES SALARIES  
ACCRUED FICA  
ACCRUED FED W/H  
ACCRUED CREDIT UNION  
ACCRUED PROFIT SHARE  
ACC PARKING - TENN  
NET PAY

107 JONES, EDWARD  
CHECK # 1665 CD1  
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CHECK # 1680 CD1  
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26a

NASHVILLE BANNER PUBLISHING CO., INC.

PROFIT & LOSS STATEMENT  
STATEMENT OF INCOME/(LOSS) AND  
ACCUMULATED DEFICIT

TEN MONTHS ENDED	OCTOBER 1989	OCTOBER 1988
------------------	-----------------	-----------------

REVENUE

\$ OF TENNESSEAN INCOME {All income information  
redacted}

OTHER INCOME

COSTS AND EXPENSES:

EDITORIAL  
GENERAL AND ADMINISTRATIVE  
DEPRECIATION AND AMORTIZATION  
INTEREST EXPENSE

TOTAL EXPENSES

NET PROFIT/LOSS BEFORE INCOME TAX

INCOME TAX

NET PROFIT/LOSS AFTER INCOME TAX

DIVIDENDS

OCTOBER 30, 1989

27a

Simpkins

July 1

Attached is a copy of the contract given to {name  
redacted}.

Elise



**NASHVILLE BANNER**  
**1100 Broadway**  
**Nashville, Tenn. 37203**

Elise McMillan Phone (615) 259-8202  
 General Counsel and  
 Executive Vice President, Administration

DATE: February 23, 1989

TO: { }

FROM: Elise D. McMillan

{ } following is a brief overview of benefits to which { } is entitled. As I mentioned earlier, estimates are included and { }.

Life insurance - { } policies in the amount of { } and { }. These are available only to employees.

Medical insurance - Coverage under the { } plan for { } and { }. As an employee, { } would { } the same { } as other full-time employees. We currently continue to { }.

Pension plan - As an employee, { } would { } plan. The { }. With retirement { }, { } would { } \$ { } annually from our { }. This is an estimate that would depend on the type of the payment from the plan that { } and { } choose.

Thrift plan - As of January 1, 1989, { } had about \$ { } in the { } plan. Under this plan we { } plan. { } account in the plan would { }. Money from the { } can be { } under only three circumstances - { }.

These are the highlights. I'll be glad to go into more detail with you on these or explain any other benefits you may

have questions about.

EDM:hf

cc: Irby C. Simpkins

**NASHVILLE BANNER**  
**1100 Broadway**  
**Nashville, Tenn. 37203**

TO: IRBY C. SIMPKINS, JR.

FROM: IMOGENE STONEKING

DATE: FEBRUARY 3, 1989

RE: { }

{ }

1. Although { } will { } his salary { } with { } .  
Estimated cost to company - salary plus any benefits  
determined - { } .
2. Retain { } . Cost to company - { } - estimated  
{ } .
3. To purchase { } . Estimated { } .

As a { } cost - under { } - { } annually.

As a { } cost is { } annually.

Retirees do not have { } coverage.

At { } would no longer { } and this would amount to an  
approximate { } . This is an estimate that will depend on  
the type of { } .

As of January 1, 1989 { } would { } from the { } .

cc Eddie Jones  
Elise McMillan

2/8

{ }

{ }

{ }

\$ { } annually

{ }

{ }

full { } package

can request { } prior approval

include { }

{ }

{ }

perform { } duties

available assyn. { }

inkeeping assyn. { }

for company

prior approval { }

at time terms & conditions

commitment continues beyond { } { } { } of Banner  
{ } or assignee right to { } & purchase { } & continue  
obligations { }

office { } { } { }

disability

right - { }

death? ----- terminates at { }

{ }

20. The Banner may { } { } { } { } { } { }

{ } { } { } { } { } { } { } { } { } { } { } { } { } { }

s/ \_\_\_\_\_  
Notary Public  
My Commission expires June 4, 1990



[Caption Omitted]

NOTICE OF FILING ORIGINAL AFFIDAVITS

Please take notice that on this 10th day of March, 1992, the original affidavits of Elise D. McMillan, Irby C. Simpkins, Jr., Edward F. Jones, and Imogene L. Stoneking, have been filed in support of Defendant's pending Motion for Summary Judgment filed on January 7, 1992. Copies of these affidavits were filed as Appendices I, J, K, and L on January 7, 1992, and Defendant hereby files the original affidavits as well.

Respectfully submitted,

KING &amp; BALLOW

[Caption Omitted]

STATE OF TENNESSEE )

COUNTY OF DAVIDSON )

*AFFIDAVIT OF IRBY C. SIMPKINS, JR.*

1. I, Irby C. Simpkins, Jr., am Publisher of the *Nashville Banner* and President of the Nashville Banner Publishing Co., ("the Company").

2. From approximately March, 1989, through October, 1990, Christine McKennon held the position of secretary to Imogene Stoneking, Comptroller. In this position, Ms. McKennon had access to proprietary and confidential documents and information. These documents included payroll data, financial information, personnel and other confidential files.

3 I have been advised that during her deposition on December 18, 1991, Ms. McKennon admitted to having copied and removed from the Company's premises proprietary and confidential documents and information that she had access to by virtue of her employment as Ms. Stoneking's secretary. Ms. McKennon was not authorized to do this. I have been advised that she, in fact, admitted that she was not authorized to do so. Ms. McKennon did not advise me about or seek my consent to her actions. I am told that she admitted that she did not advise any other officer or manager of the Company about or seek their consent to her actions.

4. Ms. McKennon's actions constituted obvious and deliberate misconduct involving breach of trust and confidentiality obligations. When she admitted these actions during her deposition, it was the first time I or the Company knew of this misconduct.

5. Had I learned of Ms. McKennon's misconduct

36a

at any time prior to her separation from the employment on October 31, 1990, I would have terminated her immediately. Once I learned of her admissions, I wrote her a letter dated December 20, 1991, setting forth this fact. A copy of this letter is attached hereto as Appendix A.

FURTHER AFFIANT SAITH NOT.

S/S

Irby C. Simpkins, Jr.

37a

Nashville Banner  
1100 Broadway  
Nashville, Tenn. 37203

Irby C. Simpkins, Jr.  
President and Publisher

Phone (615) 259-8201

December 20, 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Christine McKennon  
321 Harbour Drive  
Old Hickory, TN 37138

Dear Ms. McKennon:

During your deposition on December 18, 1991, you admitted under oath that you engaged in conduct that constituted breaches of your duties and responsibilities while you were employed by the Nashville Banner Publishing Company. This is the first time that the Company knew of your misconduct.

Specifically, you testified that on at least two separate occasions, you surreptitiously photocopied proprietary and confidential documents and information to which you had access by virtue of your employment as a confidential secretary. You then removed these copies from the premises and converted them to your own use. In one instance, despite having been instructed to shred documents, you copied and purloined them. Other confidential documents you copied were removed from the personnel or related files pertaining to an executive of the Company.

You of your own admission took these actions without the knowledge or consent of any officer or manager of the

Company. Your further admitted that you took these actions knowing that you were not authorized to do so.

Had the Company discovered your actions when you took them, you would have been terminated immediately. Similarly, if your actions had been discovered at any time prior to your separation from employment on October 31, 1990, you would have been terminated immediately. If you were presently employed with the Company, you would be terminated immediately.

Such obvious and deliberate misconduct involving breach of trust and confidentiality obligations simply could not or will not be condoned or tolerated. We trusted you as the custodian of our Company's most sensitive financial and personnel information and your willful breach of that trust could or can only result in immediate termination.

Sincerely,

S/S

Irby C. Simpkins, Jr.

ICSjr:tt

[Caption Omitted]

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

*AFFIDAVIT OF EDWARD F. JONES*

1. I, Edward F. Jones, am Editor of the *Nashville Banner*, published by the Nashville Banner Publishing Co. ("the Company").

2. From approximately March, 1989, through October, 1990, Christine McKennon held the position of secretary to Imogene Stoneking, Comptroller. In this position, Mc. McKennon had access to proprietary and confidential documents and information. These documents included payroll data, financial information, personnel and other confidential files.

3. I have been advised that during her deposition on December 18, 1991, Ms. McKennon admitted to having copied and removed from the Company's premises proprietary and confidential documents and information that she had access to by virtue of her employment as Ms. Stoneking's secretary. Ms. McKennon was not authorized to do this. I have been advised that she, in fact, admitted that she was not authorized to do so. Ms. McKennon did not advise me about or seek my consent to her actions. I am told that she admitted that she did not advise any other officer or manager of the Company about or seek their consent to her actions.

4. Ms. McKennon's actions constituted obvious and deliberate misconduct involving breach of trust and confidentiality obligations. When she admitted these actions during her deposition, it was the first time I knew of this misconduct.

5. Had I learned of Ms. McKennon's misconduct at any time prior to her separation from employment on



October 31, 1990, I would have terminated her immediately.

FURTHER AFFIANT SAITH NOT.

S/S

Edward F. Jones,

[Caption Omitted]

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

*AFFIDAVIT OF IMOGENE L. STONEKING*

1. I, Imogene L. Stoneking, am Comptroller for the Nashville Banner Publishing Co. ("the Company").

2. From approximately March, 1989, through October, 1990, Christine McKennon held the position as my secretary. In this position, Ms. McKennon had access to proprietary and confidential documents and information. These documents included payroll data, financial information, personnel and other confidential files.

3. During her deposition on December 18, 1991, Ms McKennon admitted to having copied and removed from the Company's premises proprietary and confidential documents and information that she had access to by virtue of her employment as my secretary. Ms. McKennon was not authorized to do this and, in fact, admitted that she was not authorized to do so. Ms. McKennon did not advise me about or seek my consent to her actions, and she admitted that she did not advise any other officer or manager of the Company about or seek their consent to her actions.

4. Ms. McKennon's conduct constituted obvious and deliberate misconduct involving breach of trust and confidentiality obligations. When she admitted these actions during her deposition, it was the first time I knew of this misconduct.

5. Had I known of Ms. McKennon's misconduct at any time prior to her separation from employment on October 31, 1990, I would have terminated her immediately or, alternatively, would have recommended that she be terminated immediately.

FURTHER AFFIANT SAITH NOT.

S/S

Imogene L. Stoneking

[Caption Omitted]

STATE OF TENNESSEE

COUNTY OF DAVIDSON

*AFFIDAVIT OF ELISE D. MCMILLAN*

1. I, Elise D. McMillan, am General Counsel and Executive Vice President for Administration of the Nashville Banner Publishing Co. ("the Company").

2. From approximately March, 1989, through October, 1990, Christine McKennon held the position as secretary to Imogene Stoneking, Comptroller. In this position, Ms. McKennon had access to proprietary and confidential documents and information. These documents included payroll data, financial information, personnel and other confidential files.

3. During her deposition on December 18, 1991, Ms McKennon admitted to having copied and removed from the Company's premises proprietary and confidential documents and information that she had access to by virtue of her employment as Ms. Stoneking's secretary. Ms. McKennon was not authorized to do this and, in fact, admitted that she was not authorized to do so. Ms. McKennon did not advise me about or seek my consent to her actions, and she admitted that she did not advise any other officer or manager of the Company about or seek their consent to her actions.

4. Ms. McKennon's conduct constituted obvious and deliberate misconduct involving breach of trust and confidentiality obligations. When she admitted these actions during her deposition, it was the first time I knew of this misconduct.

5. Had I known of Ms. McKennon's misconduct at any time prior to her separation from employment on October 31, 1990, I would have terminated her immediately

or, alternatively, would have recommended that she be terminated immediately.

FURTHER AFFIANT SAITH NOT.

S/S

Elise D. McMillan

[Caption Omitted]

*PLAINTIFF'S STATEMENT OF DISPUTED  
MATERIAL FACTS*

Pursuant to Local Rule 8, plaintiff submits this Statement of Disputed Material Facts. Accordingly, plaintiff submits that the following facts are material to defendant's Motion for Summary Judgment and that genuine issues exist regarding these facts:

1. Plaintiff did not copy the payroll ledger and profit and loss statement in the fall of 1989. Plaintiff previously testified that the documents were copied then. However, her final corrected deposition and attached affidavit indicate that the documents were copied sometime between January, 1990 and March 1990. (See affidavit, C. McKennon, paragraph 12).

2. Plaintiff did not remove the payroll ledger and profit and loss statement from The Nashville Banner premises in the fall of 1989. These documents were kept in a file cabinet after they were copied. The documents were taken to plaintiff's home during late April, 1990 or early May, 1990, after Imogene Stoneking told plaintiff that Mr Simpkins wanted a memo on plaintiff's retirement plans, and Ms. Stoneking made written inquiry to the company's pension administrator regarding plaintiff's retirement status.

3. The documents copied and later removed were approximately four (4) pages of a stack of documents which were given to plaintiff to shred. Plaintiff submits that these four (4) pages were parts of the payroll ledger and parts of the profit and loss statement. No more than four (4) pages were copied.

4. Defendant submits that "In the summer of 1989, plaintiff copied and removed . . . a series of documents and an agreement relating to a company manager." (Defendant's Undisputed Facts, paragraph 9). In fact,

plaintiff copied only the contract which was in her file cabinet, maintained by her, and to which she had full access. Also, much of the details had been related to her by Ms. Stoneking.

5. Plaintiff did not reveal the contents of the contract, or the other documents, to "other persons," plaintiff only showed the contract and other documents to her husband. After litigation was filed, plaintiff revealed the documents to her attorney. (Affidavit, C. McKennon, paragraph 13).

6. Plaintiff's conduct does not constitute "deliberate misconduct involving breach of trust and confidentiality" unless revelation to her husband is breach of trust and confidentiality. The information contained in all the documents was learned by plaintiff in the course of her employment, and her requisition of this knowledge was not wrongful. Much of the information was told to plaintiff by Ms. Stoneking and the remainder was revealed to Ms. McKennon in the course of her job.

RESPECTFULLY SUBMITTED,



[Caption Omitted]

STATE OF TENNESSEE )

COUNTY OF DAVIDSON )

*AFFIDAVIT OF GENE McKENNON*

1. I am the husband of the plaintiff, Christine McKennon, and we have been married for more than 37 years.

2. My wife has been employed by The Nashville Banner since 1951 and never expressed concern to me regarding her job security until March, 1989, when she informed me that her supervisor, Imogene Stoneking, had stated that Christine's employment had somehow been jeopardized during the reassignment and/or demotion of Jack Gunter. This information was shocking to Christine and I because she had always enjoyed a successful and secure job at The Nashville Banner. We had many conversations regarding the significance of Mr. Gunter's job change to Christine's employment with the Nashville Banner. We were perplexed and somewhat confused, since Christine had always enjoyed positive performance evaluations, and knew of no reason that would suggest her termination. During this time, Christine showed me a document which appeared to be Mr. Gunter's employment contract with The Nashville Banner. We read it in an effort to ascertain information that could explain Ms. Stoneking's statement regarding Christine's job security. I never distributed or shared the information in the document with anyone, except Christine.

3. During the next year, Christine's anxiety regarding her job continued to increase, and our concern seemed to be confirmed almost weekly. Christine related to me many statements made by Ms. Stoneking about such things as the feasibility of retirement, the financial plight of The Nashville Banner, and the number of secretaries.

Increasingly, Christine would discuss problems associated with parking privileges, lunch hour privileges, vacation privileges, and other work related difficulties. It seemed that what had been an excellent employment situation was rapidly deteriorating. Christine became more and more anxious as the months elapsed.

4. Near the end of 1989, or beginning of 1990, I was informed by Christine that staff reduction was being discussed, and that her supervisor seemed to be suggesting her retirement. In April, 1990, Christine informed me that Ms. Stoneking had stated that Mr. Simpkins had inquired about Christine's retirement plans, and Ms. Stoneking had sought authorization to obtain information regarding Christine's retirement benefits. These events were devastating to both of us, since Christine did not seek retirement and our earlier fears had been confirmed. We had previously discussed whether Christine's age was a factor. In April, 1990 we became convinced and we consulted with legal counsel regarding age discrimination. Shortly thereafter, either in late April, 1990 or early May, 1990, Christine showed me several pages of documents regarding The Nashville Banner's payroll and finances. We reviewed these documents together only to ascertain whether the financial explanations being offered by Ms. Stoneking were valid. The information was incomplete, and we actually reached no conclusions. I shared the information and the documents with no one, other than Christine.

FURTHER AFFIANT SAITH NOT.

S/S

GENE MCKENNON

## [Caption Omitted]

STATE OF TENNESSEE )

COUNTY OF DAVIDSON )

*AFFIDAVIT OF CHRISTINE MCKENNON*

1. I am the plaintiff in the above styled case. I was employed by The Nashville Banner on or about May 14, 1951, and terminated on October 31, 1990. At the time of my termination I was 62 years old.

2. Throughout my tenure with The Nashville Banner, I worked as a secretary to six different individuals, and as secretary to the national advertising manager, and as secretary to the classified advertising staff. From February 26, 1982 until March 6, 1989, I held the position of secretary to Jack Gunter, Executive Vice President. In each of these positions, my performance was evaluated. My evaluations were favorable and I never received a negative performance evaluation.

3. While I was secretary to Mr. Gunter, I became familiar with Imogene Stoneking, who worked as a bookkeeper and then became Comptroller. Ms. Stoneking and I were friendly and in the years 1987-89 we talked often, almost daily. Ms. Stoneking worked directly with Irby Simpkins, the Publisher and part owner. Many of our conversations involved matters relating to Mr. Simpkins and the business of The Nashville Banner. Ms. Stoneking once said that it was good to be able to talk to someone, and that she was grateful that I was available to her.

4. During these years of conversations, Ms. Stoneking revealed many things about Mr. Simpkins and The Nashville Banner. I never solicited information from Ms. Stoneking, and I never revealed information received from her, except in occasional personal conversations with my husband. For example, Ms. Stoneking told me details concerning Mr. Simpkins' purchase of a condominium in

Florida, she told me about his purchase of a large boat, she told me about Mr. Simpkins buying his daughter a BMW automobile on her 16th birthday, and his purchase of a Cadillac. Often, Ms. Stoneking would speak about developments regarding Mr. Simpkins' divorce and remarriage. Ms. Stoneking discussed rumors about personal affairs among people associated with The Nashville Banner, and would often discuss decisions made in the Publisher's office, involving Banner business. Ms. Stoneking also discussed the personal business of Brownlee Currey, Chairman, and Mr. Simpkins' personal business. Ms. Stoneking talked about the stress of her job, and her fears and concerns about the job and its requirements. Ms. Stoneking also discussed the propriety of Mr. Simpkins' personal and business activities. Much of the information which I received during these conversations with Ms. Stoneking was not otherwise available to me. This relationship became familiar, and as comfortable to me. I did not seek this relationship but it was friendly and interesting. I never divulged the contents of our conversations, except an occasional mention to my husband.

5. Sometime early in 1989, Ms Stoneking told me that Mr. Gunter, my boss, the Executive Vice President, would be terminated. Ms. Stoneking told me not to reveal this information and I did not, not even to Mr Gunter. Sometime later, Ms. Stoneking told me that the plan had changed, and Mr. Gunter would not be terminated, but would be demoted with a five (5) year contract. Again, I made no disclosure of this information.

6. During the first week of March, 1989, Mr. Gunter called me to this office and told me that he was being reassigned, and that I would no longer be his secretary. I already knew that Mr. Gunter was being demoted or reassigned, but I pretended not to know. Effective March 6, 1989, I was reassigned as secretary to Imogene Stoneking, who was then Comptroller.



7. Immediately after my reassignment to Ms. Stoneking, she told me "you were almost let go." Ms. Stoneking explained that my termination had been discussed relative to Mr. Gunter's reassignment and/or demotion. I was shocked and devastated by this information since I had never felt insecure about my employment, because of my tenure and my performance record. This was the first time in my life that I felt that my job was in jeopardy, and I was very concerned. I believed that any idea to terminate me was not fair, given my record. I was anxious to know the reasons.

8. Since 1971, I had handled payroll functions for The Nashville Banner, and had complete access to the personnel records, including Mr. Gunter's records. After my assignment to Ms. Stoneking, my office was located on the third floor. The personnel files were contained in a filing cabinet in my office, to which I had full access on a daily basis, without any prohibition. After Ms. Stoneking's information regarding my job security, I opened Mr. Gunter's personnel file which was in the file cabinet in my office, to learn why there had been any consideration of my termination. Therein, I found a contract between Mr. Gunter and The Nashville Banner, changing his assignment and compensating him for the next five (5) years. Because I was concerned about my job, and the effect of Mr. Gunter's reassignment on my employment, I copied the contract and took it home to read. I read the contract and allowed my husband to read it, and never discussed it or showed it to another person. The only other person I shared the contract with was my lawyer, after litigation was commenced in this matter. Again, the contract was located in a file cabinet in my office, in Mr. Gunter's personnel record to which I had full access without prohibition. I had access to records of this nature, which were maintained in my offices for approximately 18 years.

9. After I was assigned to Ms. Stoneking, and after she informed me that any termination had been

considered, I began to experience certain changes in circumstance which began to increase my concern. Ms. Stoneking spoke often about the predicament of afternoon newspapers, and how their future was dim. On numerous occasions, Ms. Stoneking told me that Mr. Simpkins thought The Nashville Banner had too many secretaries. Ms. Stoneking indicated, in conversation and otherwise, that Mr. Simpkins was not pleased with the financial situation of The Nashville Banner. Ms. Stoneking began to discuss retirement. Ms. Stoneking used a Tennessean employee, Robert Jones, as an example. Mr. Jones was an older employee, and Ms. Stoneking would say that she did not understand "why these people don't retire". Ms. Stoneking would ask me "why don't they retire?" I recall her once saying "I hope I can get out at age 55."

10. Later in 1989, I began to experience changes at work, which I believed were calculated to make my job less comfortable. For example, my parking privileges were changed, and I was required to walk further. Seemingly trivial matters, such as whether or not I was physically located at my desk became important. Lunch hour privileges were changed, and weekend work was mentioned. I began to suspect a pattern calculated to separate me from my job.

11. In December, 1989, I was moved from the general administrative payroll to the newsroom payroll, although my job remained the same (secretary to the Comptroller). This status change seemed unnecessary and peculiar, since Ms. Stoneking reported directly to the Publisher. Soon thereafter, in either December, 1989 or January, 1990, Ms. Stoneking told me "you might as well know something, there are going to be staff reductions around here." I learned that the reduction would be made from the newsroom budget, not the general administrative payroll.

12. Sometime between January, 1990 and March,



1990, Ms. Stoneking gave me a stack of documents and directed that I shred them. My duties regularly involved shredding documents for Ms. Stoneking. Two shredding machines were available, a large one which shredded stacks of papers simultaneously was located in the payroll department on another floor, and a smaller one which allowed only the shredding of about two or three pages, was available in my work area. I was using the smaller machine, separating the documents, and shredding them two or three pages at a time, when I noticed figures regarding payroll and revenues. I was curious regarding these figures because I heard so much about The Nashville Banner's financial conditions from Ms. Stoneking. I copied approximately four pages, two regarding payroll and two regarding revenues, and placed them in a file cabinet in my office. My intent was to review these documents, in an attempt to learn information regarding my job security concerns.

13. In April, 1990, Ms. Stoneking told me that Mr. Simpkins had asked for a memo regarding my retirement plans. Ms. Stoneking then requested authority to contact The Nashville Banner's pension administrator and ascertain my retirement status. I had no desire to retire and no desire to inquire myself, but because of her position, I allowed Ms. Stoneking to make inquiry. Ms. Stoneking contacted the pension administrators and gave me a letter confirming her inquiry. Ms. Stoneking's inquiry and actions increased my anxieties, and I became most concerned. I removed the copied documents and took them home to discuss my situation with my husband. I believe I took them home during the end of April, 1990 or the first part of May, 1990. My purpose for removing the documents was to seek my husband's counsel. I felt the documents would assist us in reviewing our options regarding my obviously deteriorating job situation. By this time I knew I was being forced out. The retirement inquiry and other circumstances, led me to conclude that my age was a consideration. I wondered whether the "gloom and doom" economics of the

Banner were being offered as an excuse. I felt these documents would provide source information. I shared these documents and the information contained thereon with no one except my husband, until I provided them to my attorney after the litigation commenced.

FURTHER AFFIANT SAITH NOT.

S/S

CHRISTINE MCKENNON

[Caption Omitted]

*NOTICE OF FILING DOCUMENTS*

Plaintiff gives notice that the following documents have been filed to supplement response to defendant's motion for summary judgment:

1. Selected excerpts from the deposition of Christine McKennon; (December 17 and 18, 1991);
2. Selected excerpts from the deposition of Irby C. Simpkins, Jr.; (March 6, 1992);
3. Selected excerpts from the deposition of Elise David McMillian; (March 9, 1992);
4. Selected excerpts from the deposition of Imogene Stoneking;
5. A copy of a letter dated April 24, 1990, from Vickie N. Williams to Imogene Stoneking; (Exhibit 1 to Christine McKennon Affidavit).

Respectfully submitted,

[Caption Omitted]

*SELECTED EXCERPTS FROM THE DEPOSITION**OF IRBY C. SIMPKINS, JR.**DEPOSITION DATES - MARCH 6, 1992*

[5] IRBY SIMPKINS, JR., having been first duly sworn, was examined and deposed as follows:

*DIRECT EXAMINATION BY MR. TERRY:*

Q. Mr. Simpkins, have you given a deposition before?

A. I have.

Q. So you know what depositions are about.

A. Yes, sir, I do.

Q. I represent Christine McKennon. You are the Publisher of the Nashville Banner; is that correct?

A. That is correct.

Q. How long have you been Publisher?

A. Since 1981.

Q. How is the Nashville Banner organized; is it a corporation?

A. It is a Subchapter S Corporation.

Q. And who holds stock in that corporation?

A. It is owned by two [6] shareholders, each of them owning 50 percent; Brownlee Currey and myself.

Q. And does Mr. Currey hold an office at the Nashville Banner?

A. Yes. He is Chairman of the Board.

Q. And your title is Publisher; is that correct?

A. And President.

Q. Would you take this pad and paper and this pen, or your pen, and draw an organizational chart of the Nashville Banner, as it existed in October of 1990?

A. Yes, I will. That would be the rest of the newspaper, would be reporting to Mr. Jones.

Q. Well, you have indicated on what will be Exhibit 7, "I.C.S." Is that you?

A. Yes, it is.

Q. And you are the Publisher; correct?

A. Um-hum (affirmative response.)

Q. And Mr. Currey is the Chairman?

A. Chairman.

Q. And Mr. Jones was then what?

\*\*\*

[12] A. To publish a daily newspaper in Nashville, Tennessee.

Q. What is the name of the daily newspaper?

A. Nashville Banner.

Q. Are you a resident of Middle Tennessee?

A. I am.

Q. And where do you reside; what county?

A. Davidson County.

Q. How many persons does the Nashville Banner Publishing Company employ?

A. I do not know the number.

MR. WAYLAND: Are you talking about presently?

MR. TERRY: Yes.

THE WITNESS: I do not know.

BY MR. TERRY:

Q. Does the Nashville Banner Publishing Company employ more than 30 persons?

A. Yes.

Q. Did the Nashville Banner Publishing Company employ more than 30 persons on October 31, 1990?

\*\*\*

[25] McKennon fired?

MR. WAYLAND: I am going to object to the characterization of the term fired.

BY MR. TERRY:

Q. Mr. Simpkins, why was Ms. McKennon fired?

A. Why was she fired? Because of a declining economic circumstance of the newspaper.

Q. And what was that declining economic circumstance?

A. Reduced revenue.

Q. And I would like to understand the reduced revenue picture that you have now articulated as the reason for my client being terminated. I don't know how far back I need to go, but maybe you could help me by telling me when the revenues of the Nashville Banner began to decline.

MR. TERRY: Let the record reflect that the witness is consulting with Counsel.

THE WITNESS: Would you please repeat



the question.

...

[82] those employees who survive.

And that's -- you know, that's, frankly, the toughest part of running a company is when you are faced with that.

Q. Do you perceive yourself as running a company that is going broke?

A. I haven't gotten the jury in on that yet, Mr. Terry.

Q. Do you value tenure in your employees?

A. Oh, absolutely.

Q. You think that is an important thing?

A. Absolutely.

Q. You know Ms. McKennon was there for 30 some years.

A. I do. And I value every one of those years she was there.

Q. And have you ever had an opportunity to review her personnel file?

A. Not to my knowledge.

Q. If over those years she was favorably evaluated, would you value that?

A. Oh, absolutely.

Q. By other people, other than [83] you, before you were there?

A. Sure. I would tell you this, is that our personnel evaluation system we use at the Banner has got a lot more heart and compassion and substance in it. We are

in a very intense business, Mr. Terry. Kind of like practicing law, you know.

And we get really next to each other in our business, because we are under so much pressure all the time.

And so I doubt that there are very many bad personnel evaluations ever been written. I am not sure I have ever written one since I have been at the Banner, if the truth be know.

But you need to know that I, from my interface position, I thought Chris McKennon was a nice person. And I enjoyed the interface that I had with her.

Q. Did you have an opinion on her performance?

A. Not really directly. Chris had kind of moved laterally. Any impressions I would have had would have been secondhand, because I never worked with her directly.

[84] Q. Do you have any impressions of complaints about her work?

A. Yes, I do.

Q. What type of impression?

A. That her performance, as the pressure of the work grew from the time she moved from working with Jack, which was basically kind of busy work in many circumstances, to real high pressure, that was working for Imogene, my general impression is that was a challenge.

Q. Has Mrs. Stoneking ever complained to you about Ms. McKennon's performance?

A. Well, I would say that Imogene would be more likely, maybe, to be protective than a complainer. If you knew Imogene very well, you would know that she would think it was her responsibility to see that Chris was doing a good job.

Q. So, you don't have any recollection of complaints by Mrs. Stoneking?

A. Not in those terms, no.

Q. What would be the process? And we are not talking about economic-related

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[88] for them not meeting the standard as an employee, yes, he would come and talk to me about that before firing them.

Now, if I were out of town and he needed to summarily take action, he has the authority to do that. But I am not sure that has ever happened.

Q. What would be an example of having to summarily --

A. Oh, a reporter who had, really, malconduct. Violated a confidence; shared newspaper documents with somebody else; stolen newspaper property. Something like that. Really serious offenses.

Q. Now, you know you signed this Affidavit, saying that you would have terminated Ms. McKennon for talking a couple of pieces of paper and copying them and keeping them in her desk. You remember that?

MR. WAYLAND: I am going to object to the question and the characterization. It assumes a fact not in evidence. The Affidavit doesn't say anything about Ms. McKennon keeping paper in her desk.

In fact, her testimony was, and [89] what come out of this, is it came out in her deposition that she had surreptitiously, without authorization, copied company documents and taken them home with her.

BY MR. TERRY:

Q. Let me show you your Affidavit, Mr.

Simpkins. It is Exhibit Number 2.

MR. WAYLAND: And not just copy of documents, confidential documents.

THE WITNESS: All right, sir.

BY MR. TERRY:

Q. Are you familiar with that Affidavit?

A. Yes.

Q. I think I have another copy, actually.

MR. WAYLAND: Excuse me. (Mr. Wayland consulting with Deponent.)

BY MR. TERRY:

Q. Have you got another copy? I think your lawyer had a copy for you. Did you have a copy?

MR. WAYLAND: My name is Eddie Wayland. I am his lawyer. No, I didn't make a copy for him, Mr. Terry. I will

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[95] budgeted, that they were going to be distributing to us as revenue.

Q. So, that is what you anticipated?

A. Yes.

Q. And the second column is what you received?

A. That's correct.

MR. WAYLAND: Is that the collective exhibit?

MR. TERRY: Yes. (Off the record discussion.)

BY MR. TERRY:

Q. Now, we are looking at Exhibit 2, Mr. Simpkins, your Affidavit and the attached letter, dated December 20, 1991. Mr. Simpkins, who drafted this letter?

A. I did, in consultation with consultants.

Q. Did you consult with your lawyer in drafting the letter?

A. He was one of them, yes.

Q. Did Mr. Wayland provide you with a draft?

MR. WAYLAND: I am going to [96] object, to the extent that calls for attorney/client communications. That is absolutely irrelevant.

MR. TERRY: Is that a yes?

MR. WAYLAND: It is an objection. I am instructing the witness not to answer.

BY MR. TERRY:

Q. Did you draft the Affidavit?

A. No, sir.

Q. Do you know who drafted the Affidavit?

A. I do not.

Q. Do you know when you first saw the Affidavit?

A. I do not know when I first saw it.

Q. Well, it bears a notary seal for December 20, 1991. If you signed it that day, is it probably the day that you first saw it?

A. I don't know.

Q. Do you have any recollection of the signing of

this Affidavit?

A. No. I mean, I know I signed [97] it, but I don't have any recollection of when or where I was or what was going on when I signed it.

Q. Do you understand the purpose in signing this Affidavit?

A. I do.

Q. What was it?

A. The purpose in signing this is to tell whoever affidavits go to -- I guess Judge Higgins -- that I considered Chris's action, that she had testified to, to be a grievous action on her part.

And that if she had been employed by the company when I found out about this, she would have been terminated.

Q. Throughout the Affidavit and letter, the word misconduct is used.

A. Yes.

Q. What misconduct did she commit?

A. First of all, let me -- okay. I am going to refer to paragraph four of the Affidavit, where I state that she -- "her actions constituted obvious and deliberate misconduct, including breach of trust and confidentiality obligations."

[98] And both of those are obvious and deliberate misconduct.

Q. All right. But specifically, what did she do that was wrongful conduct?

A. She testified that she copied and removed from the company's premises, proprietary and confidential documents and information that she had access to by virtue of her employment. She was not authorized to copy or steal



those documents.

And that she did not advise me or seek consent for that action on her part. And that she admitted in testimony, I am advised, that she did not advise any other officer or manager of the company, or seek their consent for her actions.

Q. What documents did she copy and remove?

I just want the record to reflect what Mr. Simpkins is referring to the Affidavit to answer each of his questions.

MR. WAYLAND: You are asking him questions about the Affidavit, Counsel. He said he wanted a copy to look at them. I resent any implications in your reference to [99] the record.

BY MR. TERRY:

Q. Despite Mr. Wayland's resentment, I would like the record to reflect that Mr. Simpkins is referring to the Affidavit, in answering the question, which is simply the truth.

What documents did she copy and remove?

A. My knowledge is Ms. McKennon's testimony. I don't have -- I think there was one document that was a general ledger; maybe Jack Gunter's retirement contract. I am not sure what other documents were stolen.

Q. What is your recollection -- how many pages was the general ledger?

A. I do not know.

Q. What was on it?

A. The entries, the one I remember in particular, was an entry to Brownlee O. Currey.

Q. What kind of entry?

A. Dollars that had been paid to him.

Q. Payroll information?

[100] A. I don't know whether it was payroll or not.

Q. Do you know when she took it? Do you know when she took the general ledger document?

A. No.

Q. Do you know when she copied it?

A. My knowledge is limited to her testimony. I don't think she testified with regard -- I am sorry. I don't know when she took them. I don't know when she copied them.

Q. And you don't know when she removed them from the company's property?

A. I only know what she testified to.

Q. But you weren't present for her testimony were you?

A. No, I read it.

Q. You read it?

A. Um-hum (affirmative response.)

Q. And do you know when you read it?

A. I am not sure of the exact date, no.

Q. Would it have been before you [101] signed this Affidavit?

A. Yes.

Q. So, it would be your testimony that you had a copy of her deposition on or before December 20, 1991?

A. Well, let me see. I think, Mr. Terry, that what I had was knowledge of the misconduct, from the testimony.

Q. Right.

A. And I subsequently read the testimony.

Q. Okay. So, when you signed the Affidavit, you probably had information that was given to you by either Mr. Wayland or Ms. McMillan.

A. Probably, yes.

Q. And you say that as far as the documents -- the involve documents, you think there was a general ledger sheet. You don't know how lengthy it was.

A. I do not.

Q. And you think that it had something to do with { }'s retirement package?

A. No, those are separate [102] documents.

Q. Right.

A. Which was, my understanding, copied from { }'s retirement contract.

Q. Okay.

A. I am sorry. I misclassified that. Employment contract is what I should have said.

Q. I don't know. You might have been right the first time.

A. I don't know. I believe I am right. He is still an employee of the company. I think I am right.

Q. Mr. Simpkins, aren't the details important as to exactly what she took and exactly when she copied them, and exactly when she removed anything that was copied?

A. Mr. Terry, we are in a highly confidential business. It is known throughout our company that one of the most important traits among our employees is honesty, beyond a narrow definition. It needs to be a definition of

being forthrightly honest.

And any action of any employee at the Nashville Banner, that even smelled of

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[105] an opportunity to come discuss her fears with me. She never did that.

I have absolutely no pity for an employee who uses fear, undiscussed, as an excuse for theft and dishonesty.

Q. The dishonesty, Mr. Simpkins, was what, again? What was dishonest about what is alleged?

A. She took information that was confidential in the newspaper, which is a dishonest act.

Q. She took it where?

A. She took it home, she testified.

Q. Well, and what is dishonest about that?

A. She was not authorized to have that information at home.

Q. It was unauthorized?

A. Yes. So that is dishonest.

Q. Okay.

A. I mean, if the Judge tells you you have got to do something, and you just say -- you do it by omission or commission, you are a dishonest lawyer because you have not done [106] what you agreed with the Judge you would do.

She was a dishonest employee. She had agreed to handle confidential information on behalf of the company, and she didn't do that honestly. She took part of that for her own personal use, to hold for her own gain whenever she thought she might need it or it might come in

handy or for insurance. That is clearly dishonest.

Q. And you are certain that no matter what she had explained to you, had you talked to her, and given the fact that she had 30 years with the company, and given the fact that she was afraid of losing her job, that the only action you would have taken was termination?

MR. WAYLAND: Objection, to the extent the question is totally hypothetical, and further assumes facts not in evidence. And finally, because it is a compound question. You can answer, Irby. I just wanted that objection on the record.

THE WITNESS: I would have been perfectly open to Chris coming to my office and sitting down and discussing any kind of [107] unhappiness, unpleasantness, or other problems she had with regard to her job.

BY MR. TERRY:

Q. No, I am asking you -- let's you assume this. Let's assume that Mrs. Stoneking had come to you.

A. Um-hum (affirmative response.)

Q. And Ms. McKennon was still working there; okay? Ms. McKennon was still working there. And Mrs. Stoneking came to you and said, I found this general ledger form in Chris McKennon's desk. She had it in her desk. What would you have done at that point --

MR. WAYLAND: I want to object to the question, to the extent --

BY MR. TERRY:

Q. -- if she was still working there?

MR. WAYLAND: as a hypothetical question.

THE WITNESS: I would have terminated her.

BY MR. TERRY:

Q. For having the general ledger report in her desk?

[108] A. Yes. That is clearly a dishonest act and misconduct.

Q. Do you know that she has access to the general ledger?

A. Sure.

Q. So you would have terminated her for copying something that she had access to?

A. Yes. She has no authority to copy that, unless she is instructed to by her supervisor.

Q. And the fact that she had worked there 36 years, and the fact that she had copied that because she was, whether rightfully or wrongfully, concerned about losing that job, your only action would have been to terminate her?

A. You know, actually, I would have terminated her faster because of the 36 years. Because she knows -- she knows better that a person that has been there six months, that is an absolute violation of the confidentiality of her job.

Q. Can you show -- when you say it is a violation of confidentiality --

[109] A. Um-hum (affirmative response.)

Q. -- where is the violation of confidentiality? How has confidentiality been violated?

A. Because any time that you copy information which is confidential to the company, you open up opportunities for somebody else to see it, or for it to be used in a manner that is negative to the purposes of her job.

Q. So, there is an agreement -- I mean there is an opportunity --



A. Obligation.

Q. There is an opportunity to violate confidentiality, but there is no violation of confidentiality here; is there?

A. Well, sure, it was a violation of confidentiality.

Q. Are you saying that Ms. McKennon didn't know this information, anyway?

A. She was not a party to { }'s retirement contract, or to the amount of money that { } was being paid out of the company. That was confidential information.

[110] Q. Do you know of any other instance where someone has been summarily terminated by your company for any misconduct, whatsoever, in the last five years?

A. Not in the last five years.

Q. Do you have any procedure for suspension or probation from employment at your company?

A. No.

Q. Is there any reprimand short of termination?

A. Oh, sure. But not for the kinds of misconduct that are in these documents.

Q. What type of employee action would be -- have you employed, short of termination?

MR. WAYLAND: Under what circumstances?

BY MR. TERRY:

Q. Any circumstances.

A. We have had employees who were not doing their job, who are not writing, taking pictures, with the competency that they should; or who had bad attitude problems; who [111] were consistently lacking in

productivity.

I mean, fairly standard kinds of issues that you have to deal with. Employees who need supervision and management to improve themselves.

BY MR. TERRY:

Q. And what type of action have you taken with these employees, short of termination?

A. Suspension of wage increases, supervisor sitting down with them and spending a good deal of time explaining to them that if they don't straighten up, termination will follow.

Q. Do you know of any harm that has accrued to your company, as a result of Ms. McKennon copying these documents and taking them home?

A. Well, I am not sure how those -- I am not sure how stealing those documents relates to this lawsuit. But this lawsuit is a lot of harm to my company.

Q. How is that?

A. It takes up a lot of time and it costs a lot of money.

[Caption Omitted]

*SELECTED EXCERPTS FROM THE DEPOSITION  
OF ELISE DAVID MCMILLAN*

*DEPOSITION DATES - MARCH 9, 1992*

[5] ELISE McMILLAN, having been first duly sworn, was examined and deposed as follows:

**DIRECT EXAMINATION**

**BY MR. TERRY:**

Q. State your full name.

A. Elise David McMillan.

Q. Ms. McMillan, have you given a deposition before?

A. Yes.

Q. I know you are familiar with them, so I won't explain this deposition to you. But I will say, if you need to stop and consult with Mr. Wayland, please feel free to. Or if you want to take a break. And I don't think this deposition will take very long.

A. Okay.

Q. What is your current position?

A. My current position at the Banner is Executive Vice-President for Administration and General Counsel.

Q. How long have you held that position?

A. Since 1988.

MR. WAYLAND: Mr. Terry, before you go any further, as Ms. McMillan said, since '88 she [6] has been Vice-President and General Counsel of the Nashville Banner, such that certain of her duties and day-to-day responsibilities fall within the realm of being an in-house

counsel, in which she is functioning as an attorney for the company, and in her capacity as general counsel. And other of her duties fall within more of an administrative realm and role that aren't really contingent upon the fact that she is an attorney.

Ms McMillan is here. She wears both hats today. She wore both hats prior to today; she wore both hats for the period of time that are relevant for the purposes of this lawsuit. That we are agreeing to have Ms. McMillan testify, and agreeing, to the extent that we can, consistent with the attorney/client privilege or attorney work product privilege, to have her testify.

And we are just saying, for the record, she is in dual capacity. And it is our understanding, based upon our research of the applicable case law, that by permitting her to [7] testify as to those matters which would not fall within her realm as being General Counsel, or in the role as an attorney for the Company, that that doesn't waive the right to claim privilege in appropriate context, when and if your inquiring directs itself to those areas that Ms. McMillan was acting in a capacity as an attorney and General Counsel.

And with that statement of our understanding, we are prepared to go forward. I just wanted to put that on the record at the outset, so that you would know our position.

**BY MR. TERRY:**

Q. Ms. McMillan, how were you employed by the Banner, initially?

A. The very first, when I first started working for the Nashville Banner?

Q. Un-hum (affirmative response.)

A. I started in 1978, as a reporter.

Q. All right. And when did you -- did you have

a law degree then?

A. No, I did not.

Q. When did you obtain a law degree?

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[15] termination?

A. I don't remember.

Q. Were you asked to prepare any written memorandum, expressing a legal opinion on these terminations?

A. No.

Q. Were you asked to consult with outside counsel, regarding these terminations?

MR. WAYLAND: I want to object to the question, to the extent that calls for attorney/client communications, because to the extent --

MR. TERRY: I asked her what she did. There is no attorney/client communication. I just asked her what she did.

MR. WAYLAND: You asked her what she was asked to consult. If she answers that yes or no, it communicates to you what the communication was.

MR. TERRY: Well, all right.

Q. After that meeting, did you consult with outside counsel, regarding these terminations?

MR. WAYLAND: I am going to object to the question, to the extent that you [16] put regarding on there.

BY MR. TERRY:

Q. After that meeting, did you consult with

outside counsel?

A. Yes.

Q. Did you consult with Mr. Wayland?

A. Yes.

Q. And what did you consult with Mr. Wayland about?

MR. WAYLAND: Objection, to the extent that it calls for attorney/client communications.

BY MR. TERRY:

Q. Did you -- after consulting with Mr. Wayland, did you receive any document from Mr. Wayland, expressing a legal opinion regarding the terminations?

MR. WAYLAND: Objection, to the extent that it calls for attorney/client communications.

MR. TERRY: And I assume you are instructing her not to answer.

MR. WAYLAND: Yes, sir, I am instructing her to not answer. If you are [17] going to push --

MR. TERRY: I am not waiving this attorney-client privilege issue. But I know we are not going to resolve it today. I just want to get the questions on the record.

MR. WAYLAND: Also, just -- well, since you are putting it on the record, let me say, to the extent that there were communications between Ms. McMillan and myself, they may also implicate work product privilege.

BY MR. TERRY:

Q. Did your discussions with Mr. Wayland relate to Christine McKennon?

MR. WAYLAND: Objection, to the extent it



calls for attorney/client privilege and/or work product. Direct the witness not to answer.

I also object to the relevancy of the question. You've not shown relevancy to anything about these communications, Mr. Terry, because the witness has testified that she didn't even find out about the list, until after the decision had been made. So, I put a relevancy objection on top of all of the ones that I made so far.

[18] BY MR. TERRY:

Q. When you met with Mr. Simpkins and Mr. Jones, did you understand that your legal opinion could affect the terminations, one way or another?

MR. TERRY: Let the record reflect that she is consult willing with her Counsel.

A. Will you ask that question one more time?

Q. When you met with Mr. Simpkins and Mr. Jones, did you understand that your legal opinion could affect the terminations, one way or another?

A. No. When I got that list, it was my understanding that was a final decision.

Q. When you -- have you attended any seminars or courses on employment discrimination?

A. On employment discrimination?

Q. Yes.

A. I have attended King and Ballow's "In Search of Management Rights" seminar. And that would be about it.

Q. All right. Have you directed [19] Imogene Stoneking to attend any seminars or courses, regarding employment discrimination?

MR. WAYLAND: Did you say has she

directed Mrs. Stoneking to attend?

MR. TERRY: Yes.

A. Not that I recall.

Q. Has she, to your knowledge attended any seminars on employment discrimination?

A. Not that I recall. But, you know, she doesn't work for me, so she may have and I wouldn't know it.

Q. Was she present at any seminar or course put on by King and Ballow, that you attended?

A. I don't recall. She may have gone to one of the "In Search of Management Rights", but I don't remember if she did or not.

Q. What is the name of that course?

Q. "In Search of Management Rights".

Q. Did you consult with M. Jones, as a non-lawyer, as -- well, is it Executive

\* \* \*

[34] Q. Okay. Do you have any knowledge, whatsoever, of anybody at the Nashville Banner encouraging Ms. McKennon to retire, before October 31, 1990?

A. No.

Q. Have you ever heard a discussion of Ms. McKennon's retirement, by anybody at the Nashville Banner?

A. I do recall one time, and it was in -- when we were doing salary reviews, which would have been the Spring of 1990. We were going through the reviews, and I remember that Irby Simpkins asked what Chris's retirement plans were. And Imogene was supposed to get back with that information to Irby.

And that is the last I really -- that's the only discussion I would have heard.

Q. It was in the Spring of '90; is that right?

A. (Witness nods in the affirmative.)

MR. WAYLAND: Mrs. McMillan, you have to articulate your answer. You are [35] shaking your head.

THE WITNESS: Yes.

BY MR. TERRY:

Q. Where does that discussion occur?

A. I believe it would have been in our old executive conference room, in the Banner offices.

Q. Who was present?

A. I can tell you that, normally, in a salary review session, I would be present, Imogene Stoneking, Irby Simpkins, and Eddie Jones.

MR. WAYLAND: Ms. McMillan, the question was who was present at that meeting. You either know who was there or you don't. You said normally who would be there. Were those individuals all there at the meeting?

THE WITNESS: I can't -- I don't know.

BY MR. TERRY:

Q. Normally, those people would have been there; is that correct?

A. Yes.

Q. Do you recall -- this question by Mr. Simpkins, regarding Ms. McKennon's retirement [36] plans, was directed to whom?

A. It would have been directed to Imogene

Stoneking.

Q. All right. And do you recall what would have caused or occasioned a question regarding Ms. McKennon's retirement plans?

A. Yes.

Q. Do you recall Ms. Stoneking's response?

A. No, I don't.

Q. Do you recall any other details about that conversation?

A. No.

Q. Are there minutes kept of those meetings?

A. Yes.

Q. If that meeting occurred in the Spring of 1990, do you have any specific recollection of anything else involving Ms. McKennon's termination or retirement, until that meeting that you discussed that occurred in October, when you are advised of the general list?

A. No, I don't.

[37] Q. So you have, so to speak, a void of knowledge, basically, at that point. You don't have any -- your weren't in any meetings about who is going to be terminated; who is going to be laid off, or anything like that. Is that right.

MR. WAYLAND: I am going to object to the characterization of void of knowledge, Counsel. The mere fact that something you might have wished happened, would have happened, doesn't constitute a void of knowledge. The witness has testified she was involved in no other conversations.

MR. TERRY: I certainly don't want to negatively want to characterize that. I am trying to get through that period of time, without going day by day. I'm

trying to --

MR. WAYLAND: Why don't you ask her if after that date she was involved in any other meetings involving that topic.

BY MR. TERRY:

Q. I accept that, and ask you to answer that.

A. No, I was not.

Q. Your recollection, with regard

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that we might be working with -- that Chris would be let go, and that we might be working with Ann Manning.

But beyond that, I don't have any specific recollection. I think I was more focused on, you know, getting the things prepared.

Q. Did Mr. Jones ever ask your input, any information from you, regarding the performance of Chris McKennon?

A. At what point?

Q. Anytime in 1990. Well, let me qualify that. Let's say between August and October.

A. Like I explained to you before, the way Eddie Jones manages is to ask how people are doing. He may have talked about Chris, in relation to the preparation of the salary review or budgets. I don't remember, specifically, if he did or not.

Q. Would that have been in April?

A. Could have been, but I just don't remember when it would have been.

Q. Did Mr. Simpkins ever ask your opinion or ask for any information from you, regarding the performance

of Ms. McKennon?

A. I don't recall anything.

MR. TERRY: Let's take a short recess here. I may be finished. (Whereupon, a short recess was held.)

MR. TERRY: I don't have any more questions. Thank you.



[Caption Omitted]

*SELECTED EXCERPTS FROM THE DEPOSITION  
OF IMOGENE STONEKING*

*DEPOSITION DATES - MARCH 6, 1992*

\* \* \*

[47] that. And you have never contacted us, by coming up and looking through the documents that we had available, and we have indicated our willingness to make available for your inspection, pursuant to your document request.

BY MR. TERRY:

Q. Okay. Mrs. Stoneking, are you aware that since we convened here in December, and I started taking your deposition, that the Nashville Banner has now taken the position that Christine McKennon could have been fired because she took documents that you gave her? Are you aware of that?

A. Yes.

Q. And how did you become aware of that?

A. I signed one of the Affidavits.

Q. What Affidavit?

A. That said had I -- as I recall, the Affidavit indicated that had I known she had taken documents, that she would have been fired.

Q. That she could have been fired?

A. On the spot.

Q. Okay.

[48] A. Which I would have recommended to Mr. Simpkins to do.

Q. Who prepared that Affidavit for you?

A. I don't know.

Q. You don't know?

A. No.

Q. When did you first see that Affidavit?

A. I don't recall the date.

Q. Well, do you recall who brought it to you?

A. As I recall, Elise McMillan.

Q. Let me show you a document that is marked "Affidavit of Imogene Stoneking". It bears your signature on page two. And it is notarized on December 23, 1991. See if you can identify this document as your Affidavit.

A. Yes.

Q. You state in paragraph three -

MR. WAYLAND: Excuse me, if you are going to ask the witness questions about the Affidavit, I would request that she be permitted to see a copy of it.

MR. TERRY: Here is a copy.

\* \* \*

**EXHIBIT**

ACTUARIES AND CONSULTANTS  
 BRYAN, PENDLETON, SWATZ & McALLISTER  
 ONE BURTON HILLS BOULEVARD  
 SUITE 275  
 POST OFFICE BOX 150949  
 NASHVILLE, TENNESSEE 37215  
 TELEPHONE (615) 665-1640

April 24, 1990

Ms. Imogene Stoneking  
 Comptroller  
 Nashville Banner Publishing Company  
 1100 Broadway  
 Nashville, Tennessee 37202

Dear Imogene:

Re: Nashville Banner Publishing Company  
 Pension Plan

As you requested, we have prepared a benefit application for Ms. Christine McKennon. If Ms. McKennon does retire, her benefit application must be revised to show the amounts payable in the form of joint and survivor annuities. To calculate these amounts, we would need her husband's date of birth. If you have any questions about the enclosed document, please feel free to call me.

Sincerely,

s/s  
 Vickie N. Williams, F.S.A.

Enclosure

[Caption Omitted]

REPLY TO PLAINTIFF'S RESPONSE  
 TO DEFENDANT'S MOTION FOR  
 SUMMARY JUDGMENT

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**INTRODUCTION**

Plaintiff's Response to Defendant's Motion for Summary Judgment ("Motion") raises grave concerns about abuse of the judicial process. Faced with this dispositive Motion, Plaintiff has attempted to defeat it by altering her sworn testimony in a March 13, 1992, affidavit that, in several material ways, contradicts her December, 1991, deposition testimony. In addition, Plaintiff's affidavit alters her prior testimony by adding wholly new purported factual information in an apparent effort to create disputed facts.

Notwithstanding these thirteenth hour efforts to manufacture disputed facts, Plaintiff, even after an extension of time to conduct additional discovery,<sup>1</sup> does not deny the facts that make the Company's Motion meritorious as a matter of law. Although she belatedly attempts to justify her wrongdoing, Plaintiff admits that she surreptitiously copied and took confidential, proprietary Company documents from the premises, that she was not authorized to do this, and that she shared these purloined documents with her husband. Based on these undisputed facts and on the clear

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<sup>1</sup> Plaintiff unilaterally obtained a 48-day extension of time to respond to the Company's Motion, ostensibly to enable Plaintiff adequately to prepare a response. It is telling that, after taking the depositions of four of the Company's principals during this extension, Plaintiff relied on none of this testimony to refute the factual basis for the Company's Motion. Indeed, the deposition testimony simply reaffirmed the seriousness of Plaintiff's misconduct.

law of the Sixth Circuit<sup>2</sup> as well as other Circuits, Plaintiff cannot defeat the Company's Motion for Summary Judgment based on the after-acquired evidence of her admitted misconduct.

### ARGUMENT

#### I. PLAINTIFF'S ATTEMPT TO SUBMIT A REVISED VERSION OF THE TRUTH FAILS TO CREATE GENUINE ISSUES OF FACT

The Company's Motion is based primarily upon Plaintiff's own December 17 and 18, 1991, deposition testimony. In an effort to circumvent this, Plaintiff has submitted an affidavit, dated March 13, 1992, attempting to defeat the Company's Motion by creating purported issues of material fact where none exists. Plaintiff's affidavit was prepared three days before her Response was filed and is carefully crafted and orchestrated to support the arguments raised in her Response. The affidavit is obviously self-serving. Indeed, Plaintiff does not refer to *any* proof other than the affidavit, obviously tailored specifically for the Response.<sup>3</sup> Thus, faced with a dispositive motion, Plaintiff submits an affidavit that contradicts her own unequivocal deposition testimony taken in December, 1991, at a time when she was not faced with the prospect of having her case dismissed.

<sup>2</sup> See *Johnson v. Honeywell Information systems, Inc.*, 57 F.E.P. Cases 1362 (6th Cir. 1992), discussed in and attached to the Company's Supplemental Authority in Support of Defendant's Motion for Summary Judgment.

<sup>3</sup> Plaintiff does not once cite to the record in the Statement of Facts portion of her Response and cites only twice to her affidavit in her Statement of Disputed Material Facts. Consequently, the Company and the Court are left to wonder about the source of virtually all of Plaintiff's alleged factual information.

For example, Plaintiff has attempted to change dates concerning the surreptitious copying and taking of the Company's payroll ledger and profit and loss statement. In Plaintiff's affidavit, she states that these highly confidential documents were copied after January, 1990, and removed from the Company's premises in April or May, 1990. (Plaintiff's Affidavit, ¶¶ 12, 13). However, in her deposition, Plaintiff was unequivocal in her testimony that she copied and removed these documents from the Company's premises in September or October, 1989. Significantly, in her deposition she made no mention of other dates when the documents were copied or later taken home as she now denies in your affidavit. In reference to copying and taking the Company's payroll ledger, Plaintiff testified:

Q. You made a copy of it from the original?

A. It's a copy, yes.

Q. You made the copy?

A. Yes.

Q. When did you made this copy?

A. There again, I have no specific date except it's got to be in the fall sometime in September, October of 1989.

Q. So you made this copy sometime in September or October of 1989; is that correct?

A. Right.

Q. And you took it home?

A. I took it home.

Q. You did it in September of 1989?

A. Approximately the fall in September or



October.

(See Exhibit A attached hereto). Plaintiff testified similarly with regard to copying and taking the profit and loss statement in October or November, 1989. (See Exhibit B attached hereto).

Second, Plaintiff states in Paragraph 4 of her Statement of Disputed Facts that she "copied only the contract" relating to the Company manager. However, in Plaintiff's deposition, she admitted copying and taking other confidential documents from the manager's personnel file as well, *i.e.*, handwritten notes of the Company's General Counsel and two memoranda concerning this manager.<sup>4</sup> In regard to these other documents, Plaintiff testified:

Q. You took all of those documents out of [the manager's] personnel file?

A. That's correct.

Q. And you made a copy of it?

A. That's correct.

(See Exhibit C attached hereto). Noticeably absent from her affidavit is any mention of these other confidential documents that she surreptitiously photocopied and removed from the Company's premises. Indeed, her affidavit conflicts outright with her deposition.

Third, Plaintiff states in her affidavit that she was told by the Company Comptroller, Ms. Stoneking, that a Company manager, Mr. Gunter, would be demoted. (Plaintiff's affidavit, ¶¶ 5, 6). This statement is a stunning contradiction to Plaintiff's deposition testimony where, after extensive questioning, she stated flatly that "I don't know of

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<sup>4</sup> For the Court's convenience, these other documents are attached as Collective Appendix H to Defendant's Statement of Undisputed Facts.

anybody specifically telling me." (See Exhibit D attached hereto). This is a prime example of the numerous contradictions created by Plaintiff's effort to revise her prior sworn testimony.

Despite extensive discovery, Plaintiff does not reference *any* proof in her Response, save her own self-serving affidavit. This affidavit materially contradicts her original sworn deposition testimony, upon which the Company's Motion is based.<sup>5</sup> The affidavit should be seen for what it really is, an after-the-fact fabrication. Moreover, in her entire twenty-six page Response, Plaintiff does not cite the Court to one shred of evidence to refute the Company's proof that Plaintiff surreptitiously photocopied confidential business information and then removed this

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<sup>5</sup> After filing the affidavit with the Court and after the discovery cutoff date, Plaintiff tendered fifty pages of changes to her deposition. Defendant's counsel received these changes on March 19, 1992, 73 days after Plaintiff received the deposition. A preliminary review indicates that almost all of the more than 160 attempted changes are substantive reversals of prior testimony. For example, over a dozen of these attempted changes conveniently transform "yes" to "no" or vice versa. The court reporter stated that in 17 years of reporting she had never seen "such voluminous corrections by a witness, much less 50 pages worth." (See Exhibit E, letter from court reporter, attached hereto).

At this point, the Company will not address with the court the propriety of Plaintiff's attempted sabotage of the judicial process. Because the errata were submitted out of time and because plaintiff has failed in other ways to comply with Federal Rules of Civil Procedure 30(e), the matter is not yet ripe for a judicial determination under Rules 32(d)(4), 11, or 37. *See Combs v. Rockwell Int'l Corp.*, 927 F.2d 486 (9th Cir. 1991).

90a

information from the premises. Instead, Plaintiff simply seeks to justify her admitted misconduct.

In short, Plaintiff's attempt to submit a revised version of the truth fails to create genuine issues of fact. Additionally, Plaintiff's Response raises grave concerns about the length to which she is willing to go to salvage her cause of action.

91a

**Exhibit E**

**HAND DELIVERED**

March 19, 1992

Mr. R. Eddie Wayland  
Attorney at Law  
200 Fourth Avenue, North  
1200 Noel Place  
Nashville, TN 37219

In re: Christine McKennon vs. The Nashville  
Banner Publishing Company

Dear Mr. Wayland:

Attached is a folder with enclosed errata pages that was hand delivered to me by Ms. McKennon yesterday, March 18, 1992 pertaining to Vol. I of her deposition, which was hand delivered to your office and Mr. Terry's office on December 31, 1991, and pertaining to Vol II of her deposition, which was hand delivered to your office and Mr. Terry's office on January 6, 1992. Attached to the errata pages is a copy of a letter to me from Ms. McKennon, which is self-explanatory. You will note that the 50 sheets of errata pages have not been executed by Ms. McKennon, nor her signature notarized.

I feel I must point out in my 17 years of reporting, I have taken countless depositions of experts, physicians, and lay persons where the signature was not waived by the witness and have never in my career had such voluminous corrections made by a witness, much less 50 pages worth.

92a

If I can be of any further assistance in this matter,  
please do not hesitate to call me.

Yours very truly,

Teri A. Campbell

cc: Mr. Michael E. Terry

93a

[Caption Omitted]

**MOTION TO SUPPRESS  
REVISIONS OF PLAINTIFF'S DEPOSITION**

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Defendant, The Nashville Banner Publishing Co. ("the Company") moves to suppress the attempted revisions by Plaintiff to her deposition, pursuant to Federal Rules of Civil Procedure 30 and 32, and the Court's inherent power. As more fully set forth in the accompanying memorandum of law, the grounds for this motion to suppress are:

1. Some 73 days after receiving the transcript of her deposition, Plaintiff tendered 50 pages of substantive changes.
2. The deletions from, additions to, and reversals of her deposition testimony constitute material changes to the transcript of Plaintiff's deposition testimony and have been made in bad faith.

WHEREFORE, the Company respectfully requests that this Court suppress the revisions, find that Plaintiff has refused to sign her deposition transcript and deem the transcript an accurate representation of the deposition testimony to be used as fully as though signed. In addition, the Company believes that this Court should impose the cost of the Motion to Suppress on Plaintiff.

Respectfully submitted,



**[Caption Omitted]**

**MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO SUPPRESS  
REVISIONS OF PLAINTIFF'S DEPOSITION**

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Defendant, The Nashville Banner Publishing Co. ("the Company") has moved to suppress the attempted revisions by Plaintiff to her deposition, pursuant to Federal Rules of Civil Procedure 30 and 32, and the Court's inherent power. This memorandum is submitted in support of the motion.

**FACTS**

Plaintiff, formerly a confidential secretary with the Company, was terminated as part of a reduction in force. She sued, alleging age discrimination. In the course of discovery, the Company learned that Plaintiff had copied and stolen confidential company information. This serious misconduct while employed would have led to Plaintiff's immediate termination, if the Company had known of it.

The Company questioned Plaintiff about this misconduct in her deposition. Plaintiff admitted that she had copied confidential

\* \* \*

**A. BREACH OF CONFIDENCE**

Plaintiff admitted in her deposition that, when she stole the documents, she knew that her behavior was wrong:

Q: [Mr. Wayland] And if you had violated those confidences and disclosed confidential information that you received as a result of your position as a confidential secretary, did you understand that you could be disciplined or discharged for that?

A: [Plaintiff] I never did that. I didn't have that problem. My reputation was confidential and discreet, so that was no problem.

Q: But if you had done it, did you understand that you could have been discharged for that?

A: *I think anybody would have thought that.*

Plaintiff's Dep. Vol. I 153. Plaintiff's version of the results of a breach of confidence now have been completely changed. In her revisions, Plaintiff tenders this answer: "No, not necessarily" Exhibit B. The reason given is "to correct the answer." Exhibit B.

In the following question, counsel explored her knowledge that the theft of confidential company information would lead to discharge:

Q: [Mr. Wayland] So you agreed with that and you understood that then?

A: [Plaintiff] Yes.

Plaintiff's Dep. Vol. I 153. In her revisions, Plaintiff seeks to delete the indicated answer and replace it with "No." The reason given for the change is "Upon further reflection."

The questioning continued:

Q: [Mr. Wayland] And the Company had the right to rely upon you not to disclose that information?

A: [Plaintiff] Yes.

Plaintiff's Dep. Vol I 153. In her revisions, Plaintiff instructs the court reporter to delete the "Yes" answer and replace it with "No." The reason given for the change is "To correct an error." Exhibit B.

Plaintiff as a confidential secretary was in a position of trust and knowingly violated that trust by stealing

information. Her knowledge that the job she held required a higher degree of discretion than she demonstrated is relevant to this lawsuit.

Another example involves Plaintiff's reasons for taking the company information:

Q: [Mr. Wayland] And you knew you weren't authorized to make the copies and take those home, didn't you?

A: [Plaintiff] Yes.

Q: Why did you do that?

A: For my protection. For insurance purposes.

Q: From what?

A: *I had began to notice a subtle trend of harassment, so I decided I might take them as insurance.*

Plaintiff's Dep. Vol. I 233-44. In her revisions, Plaintiff instructs the court reporter to delete the indicated answer and replace it with "For my protection." The reason given for the change is "To be more consistent."

These issues were sufficiently explored so that it is unlikely that Plaintiff was in any way confused. Plaintiff has not claimed that she was confused or that she misunderstood the questions. Rather, she seeks to simply change her story after being faced with a motion for summary judgment based on her prior sworn testimony. To allow Plaintiff to make these substantive revisions will corrupt the discovery process and transform it to a useless sham rather a method for learning the truth about pending cases.

#### B. PRIVILEGES

During her deposition, Plaintiff testified largely from note cards that her husband prepared for her. Plaintiff's Dep. Vol. I 127-31; Collective Exhibit 4. Despite using this

prepared script, Plaintiff now has attempted to revise her answers including changes from "Yes" to "no" or vice versa in sixteen places. Many of these revisions bear on her claims that privileges were denied to her and that these denials were a form of harassment designed to cause her resignation.

Plaintiff was asked whether her former supervisor treated her any differently from her last supervisor. For example:

Q: [Mr. Wayland] Now, did he [former supervisor] let you take longer than an hour for lunch?

A: [Plaintiff] No.

Plaintiff's Dep. Vol. I 76. Plaintiff's revisions change that answer to "Yes." The reason given is "To correct an error." Exhibit B.

Her other claims of privileges have been similarly altered:

Q: [Mr. Wayland] So the company had changed your parking space several times during your employment?

A: [Plaintiff] Yes.

Q: So that would be a change or difference in privileges; correct?

A: Right.

Q: So you understood what I mean when I say changes in privileges?

A: Yes.

Plaintiff's Dep. Vol. I 95. Plaintiff now attempts to insert a non-responsive discourse in lieu of her answer:

But the main issue here is the fact that I had a



reserved parking space at various Banner parking location for at least fifteen years. That privilege was stripped away from me shortly after I began working for Ms. Stoneking. The removal of this privilege was one of the earlier harassments and mistreatments of me by Banner management in hopes I would resign or retire.

Exhibit B. The reason offered for deleting the "Yes" and adding this non-response is "To supplement answer." However, based on Plaintiff's agreement during the deposition that she understood the terms, the questioning continued:

Q: [Mr. Wayland] Were there any other changes like that during the course of your time with the *Banner*?

A: [Plaintiff] Yes. Then I -- when you say privilege, I consider it a privilege. During the whole time that I worked at the paper, I was allowed to read the newspaper as my workload permitted.

Q: Yes, ma'am. Now you just read that off of one of your little cards [Exhibit 4 to Plaintiff's Deposition], didn't you?

A: Yes. Ms. Stoneking told me I could not read the newspaper, period.

Q: You just read that off the card your husband prepared for you; correct, about reading the newspaper?

A: These are my writings -- it's his writing, but it's my comments.

Q: Right. But you just read that, didn't you?

A: Yes.

Plaintiff's Dep. Vol. I 95. Plaintiff has tried to delete the "Yes" and insert another non-responsive speech here:

No. The main issue here is for the entire 39 1/2 years I worked at the newspaper, I had been allowed to read the newspaper as my workload permitted. Only under Mr. [sic] Stoneking was that privilege stripped away. At the same time, other secretaries were allowed this privilege. *Discriminating treatment without a doubt.*

Exhibit B. Plaintiff gives as a reason, "To correct an error."

When asked whether he duties were the same throughout her time as a secretary to her former supervisor, Plaintiff testified:

A: Yes. When I left being his secretary, I still was doing the community affairs department.

Plaintiff's Dep. Vol. I 65. Now, she has told the court reporter to change the answer to "No." The reason given for the change is "to correct an error." Exhibit B.

### C. THE REDUCTION IN FORCE

Plaintiff contends in this lawsuit that she had a right to be transferred to another position rather than terminated in a reduction in force. She argues that not transferring her is evidence of discrimination. The Company has no obligation to offer a transfer. However, Plaintiff was asked about her willingness to be transferred to another position in the front office. She testified:

A: I may have said I don't want to go, but I never said I wouldn't go because I told Mr. Simpkins I was going.

Plaintiff's Dep. Vol. I 120. The new answer is "No." the reason given is "More appropriate answer." Exhibit B. The answer is more appropriate only in that Plaintiff believes it favors her legal position.



Later during the deposition she again admitted that she had not wanted to transfer:

Q: [Mr. Wayland] Now, one more time. Isn't it true that you told Ms. Stoneking at some point in time after your started working as her secretary that you did not want to work in the executive office for Mr. Curry and Mr. Simpkins?

A: [Plaintiff] Not Mr. Curry, No, I did not say I didn't want to work for Mr. Curry. I said I didn't want to go up there.

Q: You told Ms. Stoneking that?

A: But I --

Q: Excuse me. You told Ms. Stoneking that?

A: *That's correct. But I want it on the record that it's not that I didn't say I won't go up there. I said I didn't want to go on there.*

Plaintiff's dep. Vol. I 149. In her revisions, Plaintiff attempts to delete the admission that she did not want an alternate position and substitute: "That's not correct. I may have said I preferred to work in other areas than the executive office." The reason given for the substitution is "To supplement the answer."

These are a few examples from the 160 changes that Plaintiff delivered to the court reporter, after waiving signature by failing to sign the deposition volumes by February 6, 1992. If these pervasive changes are allowed would be to make the time-consuming and expensive deposition essentially useless and to circumvent the Company's opportunity to explore the facts and reasons behind many clearly untruthful answers.

The court should not allow the Plaintiff to mock the judicial process by these revisions. Rule 32 gives the

Court the power to suppress all or part of a deposition. Changes to a deposition have

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**EXHIBITS TO DEFENDANT'S MOTION TO SUPPRESS  
REVISIONS OF PLAINTIFF'S DEPOSITION**

**[Caption Omitted]  
DECLARATION OF TERI CAMPBELL**

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I, Teri Campbell, do hereby state and affirm upon personal knowledge as follows:

1. I am a registered professional reporter and notary public for the State of Tennessee. I have been a court reporter for 17 years.
2. I was the court reporter for the deposition of Christine McKennon, on December 17 and 18, 1991.
3. I reduced the deposition to typewritten form and delivered it to counsel for the parties on December 31, 1991 and January 6, 1992.
4. On March 18, 1992, Plaintiff in this case, Christine McKennon hand-delivered to me fifty pages of errata for the deposition.
5. The changes ordered by the Plaintiff are not corrections of transcription errors.
6. I have not yet inserted the changes and stated reasons into the record, being unsure of whether these changes are allowable, given the lapse of time, and of who would pay for the revision given Plaintiff's cover letter.
7. I have never before had anything like these changes in all the hundreds of depositions that I have taken. I pointed this out to Mr. Wayland in a letter to him; a true and correct copy of that letter is attached hereto as Exhibit C-1.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 7th day of April, 1992.

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TERI CAMPBELL

HAND DELIVERED

March 18, 1992

Ms. Teri A. Campbell  
Nashville Court Reporters  
P.O. Box 290903  
Nashville, TN. 37229-0903

Dear Teri:

I am hereby delivering to you today the following:

- (1) Nineteen (19) sheets of corrections, changes, etc. to my deposition of December 17, 1991 which you recorded at the offices of King & Ballow. These sheets are all consecutively numbered from 1-19 and are all properly marked as Volume I.
- (2) Thirty-one (31) sheets of corrections, changes, etc. to my deposition of December 18, 1991 which you recorded at the offices of King & Ballow. These sheets are all consecutively numbered from 1-31 and are all properly marked as Volume II.

I do not feel comfortable signing anything until I have your written assurance that the changes are properly received and have been recorded appropriately.

While I would like for my attorney to have a completely revised version of my deposition, I am not in a position to pay \$1.35 per page for photocopying. Therefore, your assurance, in writing, that all these changes, corrections, etc. have been made will be the document that causes me to sign the appropriate forms and have my

signature notarized.

In order there is no mistake, I am not going to pay any additional amount to get photocopies of my deposition. The \$813.30 I paid for photocopies originally, I feel, was absorbent.

My attorney, Michael E. Terry, is out of town this week, however, he is due back next Monday, March 23.

Sincerely,

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Christine P. McKennon

cc: Michael E. Terry



I, CHRISTINE McKENNON, do hereby certify that I have read the foregoing transcript of the deposition given to me on the 17th day of December, 1991, and that this is a true and accurate record of the testimony given by me, except for the following corrections I believe should be made.

Page	Line	Reads	Should Read
<u>76</u>	<u>13</u>	<u>No</u>	<u>Yes</u>

Reason for Change	<u>To correct an error</u>
<u>89</u>	<u>7</u>
	<u>Knew</u> <u>Remembered</u>

Reason for Change	<u>More appropriate answer</u>
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<u>95</u>	<u>20</u>	<u>Writings</u>	<u>Words</u>
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Reason for Change	<u>More appropriate answer</u>
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<u>120</u>	<u>9,10 &amp; 11</u>	<u>Delete this 3 line answer and insert</u>	<u>No</u>
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Reason for Change	<u>More appropriate answer</u>
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<u>153</u>	<u>16</u>	<u>Yes</u>	<u>No</u>
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Reason for Change	<u>Upon further reflection</u>
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<u>159</u>	<u>4</u>	<u>64</u>	<u>63</u>
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Reason for Change	<u>To correct an error</u>
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			<u>For the first couple</u>
<u>172</u>	<u>13</u>	<u>Well, as I say,</u>	<u>of months</u>

Reason for Change	<u>To more accurately respond</u>
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<u>179</u>	<u>25</u>	<u>Through March</u>	<u>Delete: Through March</u>
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Reason for Change	<u>Upon further reflection</u>
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<u>193</u>	<u>6</u>	<u>budget</u>	<u>computer</u>
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Reason for Change	<u>To correct an error</u>
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I, CHRISTINE McKENNON, do hereby certify that I have read the foregoing transcript of the deposition given to me on the 17th day of December, 1991, and that this is a true and accurate record of the testimony given by me, except for the following corrections I believe should be made.

Page	Line	Reads
<u>66</u>	<u>16 &amp; 17</u>	<u>Delete 2-line answer and insert</u>

Reason for Change To correct an error  
 No \_\_\_\_\_

Page	Line	Reads
<u>95</u>	<u>6</u>	<u>Delete 1-line answer and insert</u>

Reason for Change To supplement the answer

But the main issue here is the fact I had a reserved parking space at various Banner parking locations for at least 15 years. That privilege was stripped away from me shortly after I began to work for Ms. Stoneking. The removal of this privilege was one of the earlier harassments and mistreatment of me by Banner management in hopes I would resign or retire.

Page	Line	Reads
<u>95</u>	<u>23</u>	<u>Delete 1-line answer and insert</u>

Reason for Change To correct an error

No. The main issue here is for the entire 19 1/2 y ars I

worked at the newspaper. I had been allowed to read the newspaper as my workload permitted. Only under Mr. Stoneking was that pri-

ilege stripped away. At the same time, other secretaries were allowed this privilege. Discriminating treatment without a doubt.

Page	Line	Reads
<u>114</u>	<u>22</u>	<u>Beginning at line 22 and delete the entire answer</u>

115 4 all 8 lines ending on page 115 line 4 and change to read

Reason for Change To correct the statement

No. I had not received the news about my Mother's eyesight as of that time. Very late in the day, maybe 4:15 p.m., I was in Mr. Gunter's office when Mr. Simpkins entered and asked me why I was crying. I told him about the news of my Mother's eyesight loss. Then, Mr. Simpkins said, "Well, I just came back to tell you (Chris) Jack has done a good selling job, etc. You are not going to be

moving up front after all." For the record, my Mother is  
now legally blind.

I, CHRISTINE McKENNON, do hereby certify that I have read the foregoing transcript of the deposition given to me on the 17th day of December, 1991, and that this is a true and accurate record of the testimony given by me, except for the following corrections I believe should be made.

Page	Line	Reads
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128	12 thru 15	<u>Delete all four lines of answer and</u> <u>insert</u>
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Reason for Change To correct an error

No. The substance is mine. He printed them for me while  
I dictated them. He prints better than I do. I asked him to  
print them for me so the captions would be larger than my  
typewriter could make. Also, some of my notes were in  
shorthand.

Page	Line	Reads
------	------	-------

149	9 thru 12	<u>Delete 3-line answer and insert</u>
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Reason for Change To correct an error

No. I may have said I preferred to work in other areas  
rather than in the executive offices.



112a

Page	Line	Reads
149	15 thru 17	Delete 3-line answer and insert
<u>Reason for Change To supplement the answer</u>		
<u>That's not correct. I may have said I preferred to work in</u>		
<u>other areas than in the executive offices.</u>		

113a

I, CHRISTINE McKENNON, do hereby certify that I have read the foregoing transcript of the deposition given to me on the 17th day of December, 1991, and that this is a true and accurate record of the testimony given by me, except for the following corrections I believe should be made.

Page	Line	Reads
149	22 thru	
150	1	Delete 5-line answer and insert

Reason for Change To correct the record

No, I did not tell her that.

Page	Line	Reads
153	13	Delete 1-line answer and insert

Reason for Change To correct the answer

No, not necessarily

Page	Line	Reads
155	8	Delete 1-line answer and insert

Reason for Change To supplement my answer

I'm not sure I knew the amount Mr. Currey paid for his  
Lexus I told my husband Mr. Currey bought a new Lexus  
and the following day was involved in a "fender bender" near  
the newspaper building. I then asked my husband if he knew

what a Lexus looked like. He said, "Yes, there's a  
dealership up the street from our church, I'll show you  
Sunday."

March 23, 1992

HAND DELIVERED

Michael E. Terry, Esq.  
Suite 315  
150 Second Avenue North  
Nashville, Tennessee 37201

Re: McKennon v. Nashville Banner Company

Dear Mr. Terry:

We received from the court reporter on March 19, 1992, a hand-delivered package of fifty pages of "errata" for Plaintiff's deposition. The two-volume deposition was initially delivered by the court reporter on December 31, 1991, and January 6, 1992.

Plaintiff's signature and right to make legitimate changes or corrections to her deposition were waived when she failed to comply with the requirements of Rule 30 of the Federal Rules of Civil Procedure. Further, we are shocked that she would belatedly attempt through her proposed changes to fundamentally alter her version of the facts as she testified to under oath. The changes she proposes are an outrageous subversion of the Federal Rules of Civil Procedure and the integrity of the judicial process.

It is entirely improper for Plaintiff to attempt to change the substance of her answers. Never in the practice of law have I seen such clear factual manipulation and dishonesty. The court reporter's cover letter confirms our belief that Plaintiff's willingness to "revise" her prior sworn testimony is at least extraordinary.

Plaintiff's letter indicates that you were out of town when the proposed "errata" were delivered. Perhaps you

have not had an opportunity to review her "errata." Therefore, we call on you to instruct your client to withdraw all the purported changes that she tendered to the court reporter.

Failing withdrawal of the "errata," we will seek from the Court all appropriate remedies and sanctions, including suppression of the changes, costs, and possible dismissal of the suit. We look forward to your prompt response.

Sincerely,

R. Eddie Wayland /s/  
R. Eddie Wayland

REW/jk

[Caption Omitted]

*DEPOSITION OF CHRISTINE McKENNON*

Tuesday, December 17, 1991

*VOLUME 1*

\*\*\*

[29] A. "Willful conclusions." My attorney and I have drawn conclusions that it was a willful act from the certain facts that I can present you whenever you would like to hear them.

Q. You say "copyboy, Pete Green."

A. Yes. He was one of the ones that was terminated.

Q. Have you spoken to Mr. Green about this lawsuit?

A. I have not.

Q. There's some shorthand here, and then the word "contract," and then more shorthand, and then below it is the word "comptroller."

A. That was any confidential information that I had would be seen because I worked for the comptroller.

Q. Would you explain what you mean by that?

A. You had to see confidential information when you worked for the comptroller.

Q. That was part of your job?

A. That was part of my job.

Q. And you understood that was confidential information?

A. I certainly did. I was a very confidential secretary. That's probably why -- I was discreet; I was very



confidential.

[30] Q. And you understood your job required you to be confidential?

A. That's right.

Q. Down at the bottom, what is that?

A. Oh, yes. Oh, yes.

Q. If you would, just tell me what that says, please.

A. I have to elaborate, Mr. Wayland, to tell you what --

Q. You can read what it says.

MR. TERRY: Tell him first what it says, and then you have a right to explain your answer.

THE WITNESS: "Elise asked for secretarial files. Calculated harassment." Okay. She came in a month before the firing. She asked for all the secretarial files. She took them out. That shows deliberate, calculated, willful motivation on her part.

She did not bring them back in. I asked Ms. Stoneking, "What's going on? Why did she ask for all the secretarial files?" She never answered me. About ten days or maybe two weeks -- I don't know what time span it was -- they never did come back. She never did bring them back, nor did her secretary.

So I checked the files one day. They were all back. They sneaked them back in when I was at

\*\*\*

[37] Q. Did the company continue to pay you during that period of time that you were off?

A. Yes.

Q. How old were you then?

A. '79? About 51.

Q. Was Mr. Simpkins the publisher of the newspaper at that time?

A. Mr. Simpkins bought the *Banner* in August of 1979.

Q. So the answer to the questions is yes?

A. Yes.

Q. Have you had any surgery since 1979?

A. Not since 1979.

Q. Any other medical problems of any nature?

A. Since 1979?

Q. Yes, ma'am.

A. No.

Q. Any psychiatric problems or treatment since 1979?

A. No.

Q. You know I'm talking about 1979 to date?

A. That's correct; yes, I understand that.

Q. Any psychological problems?

A. No.

Q. Have you been under the care of a physician

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[42] that she not disclose the exact dollar amount. In other words, she does recall that. Although Mr. McKennon does not, she does. But it is her recollection that she's prohibited from disclosing the exact dollar amount by a document that

they maintain in a lockbox at their home.

Mr. McKennon will retrieve that document and read it; and I will read it and see what our obligations are. I do not recall the exact dollar amount. She has told me what she recalls it as. It reinforces my opinion that is not relevant evidence. But I will look at that and I may be able to share the document with you and let you decide whether or not it's disclosable. I want it to be clear that that is the only specific fact that she has any recollection about that has not been disclosed. Everything else has been told.

BY MR. WAYLAND:

Q. Now, Ms. McKennon, you started in the -- when did you start working for *The Nashville Banner*?

A. The latter part of January, 1971.

Q. '71?

Q. '71?

A. Right.

Q. So your employment history from 1951 to '71 was not with *The Nashville Banner*, was it?

A. No. It was with NPC.

Q. And that was a distinct employer from *The* [43] *Nashville Banner*, isn't that correct?

A. That is the -- they are all considered the same. When I was transferred to the *Banner*, we were under the same pension and the same vacation policy. You do not have to start again like you would a new company. In other words, my term of employment would not start in '71. It still remains at '51 -- 1951. My vacation continued on, so that is a continuation of 39 years.

Q. You're talking -- Ms. McKennon, your deposition is going to go a lot quicker if you'll just answer

my questions not and elaborate. I want to get answers to my questions. The Newspaper Printing Corporation and *The Nashville Banner* are two different entities, aren't they?

A. They were.

Q. They still are, aren't they?

A. Well, NPC is no longer.

Q. No longer what?

A. No longer NPC. It's *Banner* and *Tennessean*.

Q. All right. When did that occur?

A. I don't know. Several years ago.

Q. When you came to *The Nashville Banner* that was a different entity than Newspaper Printing Corporation; correct?

\* \* \*

[46] came to *The Nashville Banner* in 1971 that was a separate entity than NPC?

A. Yes.

Q. You worked for different people then than you had when you worked for NPC?

A. That's correct, yes.

Q. The *Banner* continued to be a separate company from NPC after you came to work at the *Banner*; correct?

A. Yes.

Q. And it continued to be a separate company through today; is that correct?

A. Yes.

Q. At some point in time, if I understand your

testimony, NPC was dissolved?

A. Right.

Q. It became the *Banner* and *Tennessean*?

A. Right.

Q. And they are separate companies; correct?

A. They are separate companies, but we have the same vacation. It's all -- what I'm trying to say, Mr. Wayland, is my employment date is not chopped off at 1971. We're all under the same pension -- we were under the same pension plan years ago. We had the same policy on vacations. When I came to the *Banner*, I didn't

\* \* \*

[66] Q. Basically it was a secretarial function that you performed; correct?

A. Yes. Also it was a lot of form letters that Jane Srygley got out. It was a lot of stuffing of envelopes.

Q. Any other change in your duties during the time you worked for Mr. Gunter from the beginning to the end?

A. I don't believe so.

Q. Was there any decrease in your duties during the time you worked for Mr. Gunter?

A. No.

Q. Everything you told me you did for him at the start, you continued to do for him when you left being his secretary in 1989?

A. Yes. When I left being his secretary, I still was doing the community affairs department.

Q. Were you doing all the other things, the payroll and the letters?

A. Yes. Excuse me. The payroll -- the payroll was shifted back to Elise McMillan's office with Helen Fuller, her secretary, doing the payroll.

Q. When was that?

A. I believe that was shifted -- if my memory serves me correctly, that was shifted when Mr. Gunter was

\* \* \*

[76] Q. And that was from the time you came to the *Banner* until the time you left; correct?

A. That's correct.

Q. What you're saying is that during this period of time, some of your bosses didn't hold you to the 11:00 to 12:00 lunch hour?

A. That's right.

Q. Now, would Mr. Gunter hold you to the 11:00 to 12:00 lunch hour?

A. No.

Q. Did he let you take longer than an hour for lunch?

A. No.

Q. He never let you take longer than an hour for lunch?

A. I may have been late coming back five minutes. What I'm saying --

Q. No, ma'am. I just asked did he ever let you take longer than an hour for lunch? That's all I'm asking.

A. Yes, I was longer than an hour sometimes.

Q. How often did you take longer than an hour for lunch while you worked for Mr. Gunter?



A. It probably averaged five or ten minutes.

Q. How many times a week?

\* \* \*

[95] Q. So that would be a change of difference in privileges; correct?

A. Right.

Q. So you understand what I mean when I say changes in privileges?

A. Yes.

Q. Were there any other changes like that during the course of your time with the *Banner*?

A. Yes. when I -- when you say privilege, I consider this a privilege. During the whole time that I worked at the paper, I was allowed to read the newspaper as my workload permitted.

Q. Yes, ma'am. Now, you just read that off of one of your little cards, didn't you?

A. Yes. And Ms. Stoneking told me I could not read the newspaper, period.

Q. You just read that off the card that your husband prepared for you; correct, about reading the newspaper?

A. These are my writings -- it's his writing, but it's my comments.

Q. Right. But you just read that, didn't you?

A. Yes.

Q. Any other privileges other than the newspaper privilege?

\* \* \*

[120] A. I never used the words "I won't go to the front office."

Q. No, ma'am. That wasn't my question, Ms. McKennon.

A. I said, "I prefer to be your secretary out here."

Q. My question is, did you ever use the words with Mr. Gunter "I don't want to go to the front office?"

A. I may have said I don't want to go, but I never said I wouldn't go because I told Mr. Simpkins I was going.

Q. Did you ever use the words with Mr. Gunter that you didn't like working in the front office?

A. No.

Q. Prior to this time when Mr. Simpkins said he was thinking about transferring you to the front office in 1988, isn't it true that you had an occasion filled in the front office for short periods of time?

Q. Not on a regular basis.

Q. But you had done it, hadn't you?

A. Just to look after the phone.

Q. Did you do it after this in 1988 -- this period of time we're talking about?

A. I'm sorry. I can't remember. It was done periodically. I can't pinpoint a time.

\* \* \*

[127] (Chris McKennon's Duties at Time of Termination on 10/31/90 marked Exhibit 3.)

BY MR. WAYLAND:

Q. So it's your testimony that you typed what's on

Exhibit 3, your list of job duties?

A. I typed it up.

Q. Then he marked the yellow highlights and wrote "new"?

A. Yes.

Q. What's the significance of the yellow highlighting on items one, three, four, five, seven and eight?

A. Okay. The highlighting is what I was doing. Of course, these were all of my duties when I was working for Ms. Stoneking. These that are highlighted are duties that I was also performing when I was working for Mr. Gunter. The new ones, two, six and nine, are the new duties that I had when I was working for Ms. Stoneking that I did not perform for Mr. Gunter.

Q. So as I understand it, the ones that are new are duties you performed in addition to the duties you performed previously?

A. Under Ms. Stoneking; that's correct.

Q. Now, prior to the lunch break this morning, [128] one of the things you showed me was a series of three-by-five cards numbered 1 through 19.

A. Yes.

Q. You testified that these were written in your husband's handwriting?

A. That is correct. I also, I believe, made a notation that I had written some lines on about three of the cards.

Q. On three of the cards you had written something additional on them, but the substance is basically your husband's?

A. That's correct. They were comments for me,

and he wrote them in his handwriting with the exception, I believe, of, like I say, three cards that has a little bit of my handwriting on it.

Q. Show me the cards that have your handwriting on it. Which ones are they?

A. These three.

Q. For the record, the three cards that have your handwriting on it are card number 10 that's entitled "Early Mondays." And there is some handwriting --

A. That is my handwriting.

Q. -- "didn't do me any good."

A. Right.

Q. Then card number 19 says "Vacation Day and [129] Discrimination"?

A. That's right. And the last paragraph, the last sentence.

Q. It says, "Harold Huggins, Jim Laise, Sara Dunn, Susan Quick. Work sheet - '88 & '89."

A. Right.

Q. And then card 18 entitled "Parting Remarks."

A. The "over" down there is my handwriting.

Q. You wrote "over" on the front?

A. That's correct.

Q. And on the back of the card you say, "no punch and cake; no gold watch; no appreciation"?

A. That's correct. That's my handwriting; right.

Q. May I have the cards back, please.

A. Yes. (Witness passes cards to counsel.)

MR. WAYLAND: For the record, I want these cards -- card number one says, "Reading Newspaper at Desk -- as work allowed." That's the title of it. Then there's handwriting.

Card two days --

MR. TERRY: Is this testimony?

MR. WAYLAND: -- "Subtle Remarks About Retirement." I'm identifying them for the record.

MR. TERRY: They are identified by [130] number, aren't they?

MR. WAYLAND: Card two says, "Subtle Remarks About Retirement." Card three says, "Beauty Shop Privilege." Card four says, "Two Hours of Sick Leave. November '89." Card five says, "Subjected to Verbal Abuse/Humiliation, June '90." Card six says, "The Threat of Staff Reductions." Card seven says, "Price Waterhouse." Card eight says, "Personnel Telephone Calls." Card nine is entitled "Irby Says." Again, each of these cards, I'm just reading off the title of the card. Card number ten is entitled "Early Mondays." Card number 11 is entitled "Irby Simpkins Will Fix It."

BY MR. WAYLAND

Q. There's handwriting "Hattie Corley." Is that your handwriting?

A. That's my husband's. Let see that for a moment.

Q. That's card number 11.

A. That's my husband's.

MR. WAYLAND: Card number 12 is entitled "You Can't Win." Card number 13 is "Lunch Hour Harassment." Card number 14 is, "What are Your Retirement Plans." Card number 15 is, "Leaving My Desk

(after she left.)" Card number 16 is "Work on Saturdays." Card number 17 is "Vacation Discrimination." [131] Card number 18 is "Parting Remarks." Card number 19 is entitled "Vacation Pay." I want to mark these cards as Collective Exhibit 4.

(Copies of 19 handwritten note cards by Mr. McKennon and Ms. McKennon marked Collective Exhibit 4.)

THE WITNESS: May I have the cards back, Mr. Wayland, or are they to be turned in to you?

MR. WAYLAND: I think we can -- at an appropriate time, we'll make copies of the cards and make the copies the exhibit, and you can have the actual cards back.

MR. TERRY: And you can refer to any of these exhibits while you're being deposed.

MR. WAYLAND: Counsel, that's kind of what I wanted to talk to you about. During the course of Ms. McKennon's deposition this morning, we took an inordinate amount of time, in my judgment, to cover relatively simple matters. Throughout the course of her testimony, as I noted repeatedly on the record, she had these cards in front of her in her hands. She repeatedly referred to the cards to answer questions and to give answers oftentimes which were not responsive. It was very obvious that she was in effect testifying from her note cards.

\* \* \*

[136] needs to be refreshed, she's entitled to refresh her recollection.

BY MR. WAYLAND:

Q. Ms. McKennon, we talked previously before



lunch about this break -- this area of breaks and entitlement to breaks. What do you base your understanding that you were entitled to two, fifteen-minute breaks on?

A. That was just a normal office procedure that people get breaks from their work.

Q. Is it your testimony that people at the *Banner* got two, fifteen-minutes breaks from their work every day?

A. I did not see a policy as such. When I was in advertising and classified, it was a general practice. I always took breaks when I was with NPC. I cannot answer -- I really cannot give you an answer why I never took breaks at the *Banner*. It was just something that I had never done. It was stopped when I went there in '71. Why? I can't answer why. I just did. It was a general procedure known that secretaries got breaks.

Q. When you were working at NPC, you got two, fifteen-minute breaks?

A. That's correct.

Q. I'm not talking about NPC, Ms. McKennon, I'm [137] talking about the *Banner*. Are you aware of any policy that was in effect at the *Banner* from 1979 on that said you got to take two, fifteen-minute breaks?

A. There was no policy at the newspaper to my knowledge. It was just a general consensus people that needed to get away for a little while from their work.

Q. Yes, ma'am, but that's different than two, fifteen-minutes breaks every day, isn't it?

MR. TERRY: Objection to the argument.

BY MR. WAYLAND:

Q. Getting away from their work is different than, two, fifteen-minute breaks every day, isn't it?

A. You would take a fifteen-minute break to get away from your desk and come back refreshed.

Q. Is it your testimony that you were entitled under company policies and practices to two, fifteen-minutes breaks every day from 1979 until your separation from employment?

A. That was no set policy. It was just understood like it was when I was in advertising. People did that. They took a smoke break, coffee break, Coke break, whatever. To my knowledge, Mr. Wayland, I never did see it in writing as a policy, but people did it.

Q. Did anybody ever tell you, you were entitled to two, fifteen-minute breaks every day from 1979 until

\* \* \*

[149] repeat the same question five times before I finally get an answer. So would you please try to cooperate with me?

A. Yes, I will.

Q. Now, one more time. Isn't it true that you told Ms. Stoneking at some point in time after you started working as her secretary that you did not want to work in the executive office for Mr. Currey and Mr. Simpkins?

A. Not Mr. Currey, no, I did not say I didn't want to work for Mr. Currey. I said I didn't want to go up there.

Q. You told Ms. Stoneking that?

A. But I --

Q. Excuse me. You told Ms. Stoneking that?

A. That's correct. But I want it on the record that it's not that I didn't say I won't go up there. I said I didn't want to go up there.

Q. Yes, ma'am. Thank you for finally answering

my question, Ms. McKennon. Now, did you also tell Ms. Stoneking that you did not want to work for Irby Simpkins in the front office?

A. I don't know that I told her I didn't want to work for Irby Simpkins. I made the statement that I didn't want to go work up in the executive offices because I was happy where I was. I did not want to

\* \* \*

[152] A. Not as much as Ms. Stoneking. The payroll.

Q. But at one point you did payroll with Mr. Gunter, too, didn't you?

A. Yes.

Q. And you understood that you were to treat that information confidential --

A. I did.

Q. -- for Mr. Gunter?

A. I did.

Q. Did you also understand that you should treat the information that you dealt with in connection in working for Ms. Stoneking as confidential?

A. I did.

Q. And you understood that that was proprietary business information?

A. I did.

Q. You understood that it was not supposed to be disclosed?

A. Yes.

Q. And you understood it was not supposed to be disclosed outside of the workplace and people who were

authorized to know at the company?

A. Yes.

Q. There wasn't any question about that in your mind, was there?

[153] A. I was a highly confidential secretary and discreet.

Q. And if you had violated those confidences and disclosed confidential information that you received as a result of your position as a confidential secretary, did you understand that you could be disciplined or discharged for that?

A. I never did that. I didn't have that problem. My reputation was confidential and discreet, so that was no problem.

Q. But if you had done it, did you understand that you could have been discharged for that?

A. I think anybody would have thought that.

Q. So you agreed with that and you understood that then?

A. Yes.

Q. And the company had a right to rely upon you not to disclose that information?

A. Yes.

Q. And did you ever while you were employed at *The Nashville Banner* breach a confidentiality -- that confidentiality obligation that you had?

A. I certainly didn't.

Q. It's your testimony you never divulged to anyone outside the company any proprietary information?

\* \* \*

[155] Q. Did you tell him how much money { } spent on a car?

A. I may have.

Q. Did you?

A. Probably yes. When he bought a Lexus, yes.

Q. In fact, you did tell your husband that, didn't you?

A. Yes.

Q. In fact, you and your husband went down to find out how much one cost and to look at the car, didn't you?

A. We pass the Lexus --

Q. No, ma'am. Just answer my question.

A. Yes, sir, it is. We pass the dealership every Sunday morning from church. That's not going and looking at a Lexus.

Q. Did you tell your husband how much money different people at the *Banner* made?

A. Not everybody.

Q. But some people?

A. Yes, to my husband, but that's all.

Q. But you did tell your husband, didn't you?

A. Not everybody's salary.

Q. Well, whose salary did you tell your husband?

A. I cannot pinpoint that, Mr. Wayland.

[156] Q. Mr. Simpkins'?

A. I cannot pinpoint.

Q. Did you tell him Mr. Simpkins' salary?

A. Yes.

Q. Did you tell him Mr. Currey's salary?

A. Yes.

Q. Did you tell him Ms. McMillan's salary?

A. Yes.

Q. Did you tell him Ms. Stoneking's salary?

A. Yes.

Q. Did you tell him Mr. Gunter's salary?

A. Yes.

Q. Did you tell him Mr. Jones' salary?

A. Yes.

Q. Did you tell him Mr. Kessler's salary?

A. I don't remember.

Q. Did you tell him other secretaries' salaries?

A. Yes.

Q. Did you tell him other employees' salaries?

A. I don't know how many people I told, but I consider my husband and myself as one person. I don't consider that going outside the building and telling confidential items.

Q. Your husband is not an employee of *The Nashville Banner*, is he?

\* \* \*

[158] discussions about the confidentiality of the information that you had access to as a result of being her secretary?



A. Did we ever -- please restate that.

Q. Did you and Ms. Stoneking ever had discussions about the confidentiality of the information that you had access to as a result of being her secretary.

A. Oh, yes. We both knew that it was highly confidential.

Q. Didn't she sometimes tell you not to talk about those kind of things?

A. No, because she trusted me. She knew I was confidential when I went to work for her. That was my reputation.

Q. Do you think she had the right to rely upon you in that regard?

A. I know she had the right to rely upon me.

Q. Now, do you recall there came a time when Ms. Helen Fuller retired?

A. Yes. She retired June 1st.

Q. Of what year?

A. 1990.

Q. Her position -- she was Elise McMillan's secretary before her retirement, was she not?

\* \* \*

[160] want to transfer to Ms. McMillan?

A. Oh, no. I would like to interject here if I might, Mr. Wayland, I was happy working for Ms. Stoneking until the pattern started of all of the harassments. Then after the harassments, they were unbearable, and then, of course, I was unhappy. I've always enjoyed my job.

Q. It was unbearable?

A. Yes, it was when the harassment started.

Q. When did the harassment start? Sometime after June of 1990; is that right?

A. No, about April 1990. One thing, she told me I couldn't read the newspaper anymore. I had always -- my workload permitting, I had always been able to do that as my workload permitted. The other secretaries were able to do it.

Q. As your workload permitted; is that right?

A. That's correct.

Q. But, in any event, in June of 1990, when a position came open for Ms. McMillan's secretary, you were very happy and satisfied with your position with Ms. Stoneking?

A. Yes, I was.

Q. Now, you became Ms. Stoneking's secretary in March of 1989?

\* \* \*

[167]A. I did not.

Q. When you transferred to work for Ms. Stoneking was there any changes in your wages?

A. That was in March. Yes, because April was when the secretaries got their raises. So I -- yes, I had a raise that April.

Q. As part of your wage review; correct?

A. Mr. Gunter did not give me -- it was during the demotion and so forth, so he did not write up an evaluation on me during 1989. The raise became effective in April. The once-a-year raise for the secretaries came in April.

Q. Every year; correct?

A. That's correct.

Q. So when you transferred to Ms. Stoneking's secretary, your wages weren't changed at that time?

A. In March, no.

Q. They were changed in April consistent with the yearly-wage review; correct?

A. That's correct.

Q. And you received an increase in wages; is that correct?

A. That's correct.

Q. You keep saying Mr. Gunter was demoted. Did anybody ever tell you that?

[168] A. Yes.

Q. Who?

A. It was common knowledge.

Q. Who told you that Mr. Gunter was demoted?

A. When somebody --

Q. No, ma'am. Who told you Mr. Gunter was demoted?

A. Mr. Gunter -- I don't want to say this.

MR. TERRY: State your problem with answering the question.

BY MR. WAYLAND:

Q. Do you understand the question?

A. I understand the question, but I can't say that anyone actually told me. It was just knowledge.

Q. So the answer is nobody told you that Mr. Gunter was demoted, did they?

A. No, I can't think of anybody specifically. It was common knowledge.

Q. Do you know for a fact whether or not Mr. Gunter was demoted, or is that just your characterization?

A. No, it was a demotion. Everyone considered it a demotion.

Q. But nobody from the company announced that Jack Gunter was demoted, did they?

[169] A. Everyone including the *Tennessean* --

Q. No, ma'am. Nobody from the company --

MR. TERRY: Let her finish.

MR. WAYLAND: Well, she's not answering my question.

MR. TERRY: How do you know until she finishes?

MR. WAYLAND: She's talking about the *Tennessean*. The company doesn't involve the *Tennessean*.

BY MR. WAYLAND:

Q. Nobody from the *Banner* told you -- by the *Banner*, I mean the company, anybody in a position of authority -- told you or anyone else that Jack Gunter had been demoted, did they?

A. I don't know of anybody specifically telling me.

Q. Thank you. Now, other than these additional duties that you assumed when you became Ms. Stoneking's secretary, were there any other changes in your duties?

A. No, not to my knowledge.

140a

Q. Were there any changes in your hours of work?

A. No.

Q. The same hours of work? I believe you testified previously that your lunch period stayed the

\* \* \*

141a

[Caption Omitted]

*DEPOSITION OF CHRISTINE McKENNON*

*Wednesday, December 18, 1991*

*VOLUME II*

\* \* \*

[223] going to be documents that we are designating as confidential pursuant to the protective order. This might take a moment or two if you want to take a short break and stretch your legs. We'll go off the record. Is that acceptable?

MR. TERRY: Sure.

(Recess taken *Banner* Fiscal Payroll Ledger ending 9-30-89 marked Exhibit 24. *Banner* Profit & Loss Statement for October of 1989 marked Exhibit 25. Handwritten notes to Irby Simpkins from Elise McMillan Marked Exhibit 26. Memo dated 2-23-89 to { } from Elise McMillan marked Exhibit 27. Memo dated 2-3-89 to Irby Simpkins from Imogene Stoneking marked Exhibit 28. Two pages of handwritten notes in re: { } marked Exhibit 29. Employment Agreement dated 3-1-89 between { } and *Banner* marked Exhibit 30.)

MR. WAYLAND: We have marked for purposes of exhibits to the deposition of Ms. McKennon exhibit Exhibits 24 through 30. These are documents that we are specifically identifying as confidential pursuant to the terms of the protective order.

BY MR. WAYLAND:

Ms. McKennon, let's start with Exhibit 24 that you



have in front of your. It's entitled -- also to [224] the extent necessary, the transcript references to these exhibits are considered to be confidential under the protective order.

Exhibit 24 is a *Nashville Banner* Fiscal Period Payroll Ledger. Do you see that?

A. Yes.

Q. You had a copy of that; is that correct?

A. I don't recall that.

Q. Your counsel produced that as part of your responses to the interrogatories; correct?

A. Okay. Yes.

Q. Now, do you see handwriting on there that says "annual"?

A. Yes.

Q. And a figure. Whose handwriting is that?

A. My husband's.

Q. So you took this document home and showed it to your husband?

A. Yes.

Q. Where did you get this document?

A. I come across all of this confidential information in the comptroller's office. I mean, it was made available to me.

Q. So you obtained this in the role of your -- in your role as secretary to the comptroller?

[225] A. It's information I see across her desk and my desk.

Q. This would be part of the information that would be considered to be confidential information?

A. Right.

Q. Highly confidential correct?

A. Right. Right.

Q. Do you have the original of this document, Exhibit 24?

A. No.

Q. You made a copy of it from the original?

A. It's a copy, yes.

Q. You made the copy?

A. Yes.

Q. When did you make this copy?

A. There again, I have no specific date except it's got to be in the fall sometime in September, October of 1989.

Q. So you made this copy sometime in September or October of 1989, is that correct?

A. Right.

Q. And you took that copy home with you?

A. Right.

Q. Did you tell Ms. Stoneking that you were going to make a copy of this payroll ledger?

[226] A. No.

Q. Did you tell her you were taking a copy home with you?

A. No.

Q. Did you tell any representative of the *Banner* that you were making this copy?

A. No.

Q. Did you tell anybody you were going to take it home with you?

A. I told no one.

Q. You showed it to you husband; correct?

A. That's correct.

Q. And you showed it to your attorney; correct?

A. Yes, I have shown it to Mr. Terry.

A. Anybody else?

Q. No.

A. Did you show it to the EEOC?

A. No.

Q. Did you get this information off Ms. Stoneking's desk?

A. Ms. Stoneking gave it to me.

Q. She gave it to you?

A. Right.

Q. For what purpose?

A. She gave it to me to shred.

[227] Q. Excuse me?

A. She gave it to me to shred.

Q. She gave it to you to shred?

A. That's correct.

Q. Before you shredded it, you made a copy of it?

A. That's correct.

Q. And you took it home?

A. I took it home.

Q. Without anybody's knowledge?

A. I told no one.

Q. Do you think that you were authorized to make a copy of this document and take it home?

A. Probably not, but I did it for my protection.

Q. You did it in September of 1989?

A. Approximately the fall in September or October.

Q. You knew you weren't authorized to do that, didn't you?

A. I did it for my protection.

Q. No, ma'am. You knew your were not authorized to do that, didn't you?

A. MR. TERRY: That question has been asked and answered.

MR. WAYLAND: No, it hasn't been [228] answered.

THE WITNESS: Did I know I was authorized to do it?

Q. You knew you were not authorized to do it, didn't you?

MR. TERRY: To do what?

MR. WAYLAND: To make this copy of this document and take it home.

MR. TERRY: We'll stipulate that she was not authorized. She was not authorized.

THE WITNESS: No.

BY MR. WAYLAND:

Q. You were not authorized?

A. No.

Q. Did you copy any other payroll sheets other than the two pages that are Exhibit 24?

A. I don't think so. I think that was it.

Q. You may have; you just don't recall?

A. I don't recall at the moment. I don't know.

Q. Exhibit 25 is entitled Nashville Banner Publishing Company Profit and Loss Statement.

A. Yes.

Q. October 1989?

A. Yes.

[229] Q. And comparing to October 1988?

A. Right.

Q. This is also confidential information, is it not?

A. Yes.

Q. This is information that you had access to as a result of your position as secretary to Ms. Stoneking?

A. Yes. Ms. Stoneking gave it to me.

Q. She gave you this document?

A. Yes.

Q. She gave this document to you to shred, didn't she?

A. Right.

Q. Rather than shredding it, you made a copy of it; correct?

A. And shredded it. I shredded it and make a copy.

Q. You made a copy, and then you shredded what she gave you?

A. Right.

Q. And you took the copy home with you?

A. Right.

Q. You see the word "dividends" is underlined and then those circles. Is that your husband's?

A. Yes.

[230] Q. Once again, you were not -- you knew you were not authorized to copy and take this document home, didn't you?

A. Yes.

Q. But you did it anyway?

A. Yes.

Q. You didn't tell anybody at the *Banner* that you did it, did you?

A. I told no one. No one knew it but my husband and now Mr. Terry.

Q. Did you copy this document in approximately October of 1989?

A. Approximately. I do not know the date, but approximately.

Q. October or the first of November of 1989?

A. Approximately.



MR. TERRY: Well, the date on the document is October 30th, 1989.

BY MR. WAYLAND:

Q. So it was sometime after October 30, 1989?

A. Yes, it had to be. I don't know the specific date.

Q. Exhibit 26. Do you see that?

A. Yes.

Q. What is Exhibit 26?

[231] A. That's a memo from Elise to Irby on { }'s contract.

Q. { } meaning { }?

A. Yes.

Q. It's a handwritten note to Mr. Simpkins from Elise McMillan?

A. That's correct.

Q. Where did you get this copy?

A. That was in the personnel file in my office.

Q. Whose personnel file?

A. { }'s.

Q. So you took this out of { }'s personnel file?

A. That's correct.

Q. And you made a copy of it?

A. That's correct.

Q. When did you do that?

A. I've got to assume sometime after February 23rd, 1989.

Q. Why do you assume that?

A. Because I believe this letter that you have as Exhibit 27 goes with it because this had attachments to it.

Q. Exhibit 26 had attachments to it?

A. It had the letter to { }.

[232] Q. It says, "Attached is a copy of the contract given to { }."

A. Well, sorry. The contract is Exhibit 30, which went along with this.

Q. Just a moment. Do you recall what was attached to this Exhibit 26?

A. Yes. This had attachments, yes.

Q. But you don't recall what it was?

A. To the best of my knowledge, I think Exhibit 26, 30, 27 and 28 all went together.

Q. You took all of those documents out of { }'s personnel file?

A. That's correct.

Q. And you made copies of them?

A. Right.

Q. Did you tell anybody you were making those copies?

A. No.

Q. Then you took those copies home?

A. Right.

Q. And you showed them to your husband?

A. Just my husband.

Q. And you showed them to Mr. Terry?

A. Mr. Terry; right.

Q. And all of those documents were taken out of [233] { }'s personnel file and copied sometime in the spring of 1989; is that correct?

A. No, it was later than that. They weren't copied at the time this was typed up, which would have made it later than February 23rd. To the best of my recollection, I think it was closer to August 1989. It wasn't done when this memo went out around February 23rd because I had only transferred back where the personnel files were in March when I started working for Ms. Stoneking.

Q. Sometime around August of 1989 is when you --

A. The way I recollect, it was several months after the fact -- after February 23rd.

Q. So sometime roughly in the summer of 1989 is when you took these documents out of { }'s personnel file and made a copy of them and took them home?

A. Yes.

Q. And you knew you weren't authorized to make the copies and take those home, didn't you?

A. Yes.

Q. Why did you do that?

A. For my protection. For insurance purposes.

Q. From what?

A. I have begun to notice a subtle trend of [234] harassment, so I decided that I might take these as insurance.

Q. In the summer of 1989, you had --

A. Just a tinge of it.

Q. What did you -- give me specifically what you're relying upon to say that.

A. Well, I think the two hours sick leave problem. The hair appointment was before that. Just several little things that led me to believe --

Q. Well, tell me what they were. I want to know what they were, Ms. McKennon.

A. We've already gone over those.

Q. Tell me what in the summer of 1989 --

MR. TERRY: Wait a minute. That's a mischaracterization. She never said that she took -- two of the documents on their face had to be taken after November.

MR. WAYLAND: Counsel, we're talking about the documents relating to { }. She's testified she took them out and copied them in the summer of 1989. If you have an objection --

MR. TERRY: She said the earliest that could have been was August.

MR. WAYLAND: If you have an objection, make it. If not, quit coaching the witness.

\* \* \*

[242] recall?

A. No, I do not think so.

Q. What insurance or protection do you think

this gave you, Ms. McKennon?

A. Highly confidential information.

Q. What insurance or protection to you think this highly confidential information gave you?

A. You never know.

Q. Tell me.

A. Highly confidential information. It's just good to have it.

Q. You took highly confidential information, didn't you?

A. Yes.

Q. And it was company information, wasn't it?

A. Yes.

Q. And you had access to that information because you were in a position of trust; isn't that true?

A. Ms. Stoneking gave it to me.

Q. You were in a position of trust monitoring the personnel files; isn't that true?

A. That's correct.

Q. And you took those documents out and copied them and took them home with you; is that right?

A. That's correct.

[243] Q. And you did it for your own benefit?

A. That's right.

Q. And you did it even though you knew you were not authorized to do it?

A. For my protection.

Q. And you didn't tell anybody you did it either, did you?

A. I should say not.

Q. How is this highly confidential information going to protect you, Ms. McKennon?

A. You never know. It's always --

MR. TERRY: If you can think of any specific thing --

THE WITNESS: I really can't.

MR. TERRY: Then that's it -- I don't know.

THE WITNESS: I don't know.

BY MR. WAYLAND:

Q. Can you give me any specific reason why you took this in the summer of 1989?

A. I've answered that for my protection.

Q. Give me any specific reason that you thought this was going to protect you about -- was going to provide protection to you in the summer of 1989.

A. When you see a trend of maybe harassment

\* \* \*

[254] caught doing that you would be terminated?

A. Well, I would know that I'd be terminated had I told anybody, but I did not tell anybody. They were safe with me.

Q. Had you told anybody you had taken them home?

A. No. No one knew but my husband.

Q. No, ma'am, that's not my question. You knew



that if the company determined --

MR. TERRY: Objection. There is absolutely no way she could testify for what this company would do.

BY MR. WAYLAND:

Q. Did you understand that if the company, --

MR. TERRY: Same objection.

BY MR. WAYLAND:

Q. -- Mr. Simpkins, had found out that you had copied these documents and taken them home without permission, these confidential documents, that he would have terminate you?

A. No, I don't know that.

MR. TERRY: Objection.

BY MR. WAYLAND:

Q. Did you understand that?

MR. TERRY: Calls for speculation.

THE WITNESS: No. You'll have to ask [255] Simpkins on that.

BY MR. WAYLAND:

Q. Yes, ma'am, I will. But I'm asking you what you understood.

A. I understood that if I showed these documents to anybody, I would have been terminated. But they were safe.

Q. And you understood if you took them home, you would have been terminated?

A. No, I really didn't understand that because they were safe in the house.

Q. Ms. Stoneking.

MR. TERRY: Ms. McKennon.

THE WITNESS: They were not given to anybody else.

BY MR. WAYLAND:

Q. Ms. McKennon. You're right. Ms. McKennon. Just so it's clear, Ms. McKennon, it's your testimony that you thought you could take these confidential documents, make copies of them, sneak them out of the building, and that that wouldn't put your job in jeopardy if somebody at the company found out you had done that?

A. They were safe. Nobody --

Q. No, ma'am, that's not my question. Would you answer my question, please?